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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1942

No. 828

CLEM CUMMINGS, APPELLANT

vs.

THE STATE OF MISSISSIPPI

APPEAL FROM THE SUPREME COURT OF
THE STATE OF MISSISSIPPI

FILED MAR 15 1943 , 194 .

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Transcript of the Record

PROCEEDINGS AND JUDGMENT IN THE
CIRCUIT COURT OF WARREN COUNTY, MIS-
SISSIPPI, AT A TERM THEREOF BEGUN AND
HELD AT THE COURT HOUSE OF SAID COUN-
TY, IN THE CITY OF VICKSBURG, THE FIRST
MONDAY OF JULY A.D. 1942, BEFORE THE
HONORABLE R. B. ANDERSON, JUDGE IN
AND FOR THE NINTH JUDICIAL DISTRICT
OF SAID STATE PRESIDING, IN CASE THERE-
IN PENDING, STYLED AS FOLLOWS, TO-WIT:

CHARGE: Distributing printed matter to encourage
disloyalty to the United States of America.

VERDICT: "Guilty as charged in the
Indictment."

SENTENCE: "Imprisonment in the State Peniten-
tiary for the period or duration of pres-
ent war, provided such said imprison-
ment shall not continue to be in effect
for more than a period of Ten (10)
years from this date."

DATE OF SENTENCE: "July 22, 1942."

T. J. Lawrence, District Attorney
Jno. J. O'Neill, County Pros. Att'y
J. H. Culkin, of Culkin, Laughlin & Thames

G. C. Clark, Attorney for Defendant

Organization of Court

State of Mississippi, County of Warren.

BE IT REMEMBERED that a Circuit Court in and for said County and State was begun and held at the Court House thereof, in the City of Vicksburg, on the first Monday of July A.D., 1942, being the 6th day of said month and the time and place appointed by law for the disposition of Criminal Business;

There were present Honorable R. B. Anderson, Judge of the Ninth Judicial District of the State Presiding; Honorable T. J. Lawrence, District Attorney in and for said district; Honorable Jno. J. O'Neill, County Prosecuting Attorney in and for said County; T. B. Wright, Court Reporter in and for said District; J. M. Buchanan, Sheriff of said County and W. J. Foley, Clerk of said Court.

Among other cases tried and disposed of at this Term of Court, was case numbered 4280, THE STATE OF MISSISSIPPI versus CLEM CUMMINGS, the papers and proceedings of which are in the words and figures as follows, to-wit:

ORGANIZATION OF THE GRAND JURY

And afterwards, to-wit: On the 6th day of July, A.D., 1942, the same being a day of the regular July Term 1942, the following entry was made on the minutes of said Court on page 209 of Minute Book "A-2", to-wit:

This day the names of Sixty-two (62) Jurors drawn as aforesaid being each written on a separate sheet of paper and distributed in Five (5) Boxes in open Court, drew from the said Jury Boxes in rotation, when the following named Grand Jurors were drawn to-wit:

L. T. Lee, John C. Hutchinson, Wm. Acuff, E. J. Platte, F. H. Williams, T. R. Paine, C. F. O'Sullivan,

Dave Laudenheimer, Earl C. Fife, A. H. Hoseman, H. F. Hammett, Chas. H. Bell, N. D. Feibleman, Chas. A. Ricketts, R. J. Perry and Chas. Leist.

Thereupon the Court appointed H. F. Hammett, Foreman of the Grand Jury to whom the oath as prescribed by law was duly administered in open Court and in the presence of the other Grand Jurors, and thereupon the other Grand Jurors took the same oath on their parts as the Foreman had taken on his part, and afterwards received the charge of the Court, concerning their duties, retired to consider same, attended by Harry Lee who was sworn to attend them as Bailiff.

Report of Indictment

And afterwards, to-wit: On the 10th day of July, A.D., 1942, the same being a day of the regular July Term, 1942, the following entry was made on the Minutes of said Court on page 215 of Minute Book "A-2", to-wit:

The Grand Jurors of the State of Mississippi, elected, summoned, empanelled, sworn and charged to inquire in and for the body of the County of Warren, came into Court attended by their proper officer, there being Sixteen (16) of their number present, and upon their oaths and through their Foreman presented to the Court Six (6) True Bills of Indictment, which were endorsed a "True Bill" and the same signed, were presented to the Court, and filed by the Clerk with his endorsement of filing thereon, and numbered as follows to-wit: 4278, 4273, 4280, 4281, 4282 and 4283.

The indictment numbered 4280 is the indictment against the defendant herein, and it is in the words and figures as follows, to-wit:

CIRCUIT COURT JULY TERM, 1942
STATE OF MISSISSIPPI, WARREN COUNTY

The Grand Jurors of the State of Mississippi, elected, summoned, empaneled, sworn and charged to inquire in and for the body of Warren County, State of Mississippi, at the term aforesaid, in the name and by the authority of the State of Mississippi, upon their oaths present that Clem Cummings, late of the County aforesaid, on or before the 9th day of July, A.D. 1942, with force and arms, in the County aforesaid, and within the jurisdiction of this Court, did, then and there wilfully, unlawfully, feloniously and intentionally distribute printed matter, designed and calculated to encourage disloyalty to the United States Government, and the State of Mississippi, which said printed matter so distributed was then and there in book form, designated or entitled: "Children", and said book entitled: "Children" being attached hereto and made a part of said indictment as though copied fully herein; and various other books, leaflets and pamphlets, a further exact description of which said books, leaflets and pamphlets aforesaid is to the Grand-jurors unknown, and which said various other books, leaflets and pamphlets being attached hereto and made a part hereof as though copied fully herein, and all of which reasonably tended to create an attitude of stubborn refusal to salute, honor or respect the flag or Government of the United States, or of the State of Mississippi.

Contrary to the statute in such cases made and provided, and against the peace and dignity of the State of Mississippi.

(Signed) T. J. Lawrence
District Attorney.

And the within writ is endorsed as follows, to-wit:

No. 4280

THE STATE vs. CLEM CUMMINGS

Distributing printed matter to encourage disloyalty
to the U. S. Government

NO PROSECUTOR

WITNESSES:

Tom Byrd

J. M. Buchanan

Chief Hogaboom

N. N. Hullum

W. F. McCormick

A TRUE BILL

H. F. Hammett

Foreman of Grand Jury

Filed this the 10 day of July, 1942.

W. J. FOLEY, CIRCUIT CLERK.

Capias

And afterwards, to-wit: On the 10th day of July, 1942, the same being a day of the regular July Term A.D. 1942, the Clerk of said Court issued and delivered to the Sheriff of said County CAPIAS for said defendant, which said CAPIAS is in the words and figures as follows, to-wit:

THE STATE OF MISSISSIPPI:

To The Sheriff of Warren County—GREETINGS:

We command you forthwith to take the body of Clem Cummings if to be found in your County, and him safe-

ly keep, so that you have his body before the Circuit Court, in and for said County and State, at the Court House, in the City of Vicksburg, INSTANTER, to answer an indictment of the State of Mississippi against Clem Cummings on a charge of Distributing printed matter to encourage Disloyalty to the United States Government, and have then and there this writ.

WITNESS my hand and Seal of said Court at office in the City of Vicksburg, this 10 day of July, A.D., 1942.

W. J. Foley, Clerk

SHERIFF'S RETURN

The within named defendant Clem Cummings was taken into custody and later released on bond.

This 10 day of July, 1942.

J. M. BUCHANAN, SHERIFF
BY: O. J. BORI, D.S.

And within writ is endorsed on back as follows, to-wit:

No. 4280

WARREN CIRCUIT COURT

July Term, A.D., 1942

State of Mississippi vs. Clem Cummings . . . CAPIAS
Returnable INSTANTER 1942

Arraignment

And afterwards, to-wit: on the 10th day of July, 1942, the same being a day of the regular July Term A.D. 1942, the following entry was made on the Minutes of said Court on page 216 of Minute Book "A-2", to-wit:

No. 4280

THE STATE vs. CLEM CUMMINGS

Distributing Printed Matter to Encourage Disloyalty to the United States.

Came the District Attorney who prosecutes for and on behalf of the State, and also came the defendant in his own proper person, attended by his counsel, and the said defendant being solemnly arraigned and charged on the indictment herein, says that he is Not Guilty as therein charged, and for his trial puts himself upon the Country and the State doth the like;

It is thereupon considered by the Court and so ordered that the defendant be remanded to await trial.

Demurrer to Indictment

And afterwards, to-wit: On the 10th day of July A.D. 1942, the same being a day of the regular July Term 1942, the defendant filed his Demurrer to Indictment, which said Demurrer is in the words and figures as follows, to-wit: -

**IN THE CIRCUIT COURT OF
WARREN COUNTY, MISSISSIPPI**

9TH JUDICIAL DISTRICT

No. 4280

STATE OF MISSISSIPPI vs. CLEM CUMMINGS

Now comes the above named defendant, in the above entitled and numbered cause and file this his demurrer to the indictment returned and filed herein against him and as grounds therefor say:

O N E

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is void on its face and unconstitutional because Section 1 thereof deprives the citizens and residents of Mississippi, and particularly *these* defendants, of *their* rights of freedom to worship Almighty God according to the dictates of *their* conscience, freedom of press and freedom of speech, contrary to Sections 13, 14, 18 and 32 of the Constitution of the State of Mississippi, the First Amendment to the United States Constitution, and Section 1 of the Fourteenth Amendment to the United States Constitution.

T W O

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional as construed and applied to the activity of *these* defendants because Section 1 thereof deprives *these* defendants of *their* inherent rights of freedom to worship Almighty God according to the dictates of *their* conscience, freedom of press and freedom of speech, contrary to Sections 13, 14, 18 and 32 of the Constitution of the State of Mississippi and the First Amendment and Section 1 of the Fourteenth Amendment to the United States Constitution.

T H R E E

The statute under which the indictment is drawn, known as House Bill 689 of the regular Legislative Session 1942, is unconstitutional because Section 1 thereof is unreasonable and in excess of the police powers of the State of Mississippi, thereby permitting the denial of liberty without due process of law, contrary to Section 14 of Article 3 of the Mississippi Constitu-

tion and Section 1 of the Fourteenth Amendment to the United States Constitution.

FOUR

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because Section 1 thereof is vague, too general, indefinite and permits speculation on the part of the jury and court trying the cause, thus constituting a dragnet, both on its face and as construed and applied, all contrary to Section 14 of Article 3 of the Mississippi Constitution and Section 1 of the Fourteenth Amendment to the United States Constitution.

FIVE

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because Section 2 thereof is unreasonable and in excess of the police power of the state, and is vague, indefinite and a dragnet, in violation of Section 1 of the Fourteenth Amendment to the United States Constitution.

SIX

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because the entire statute denies equal protection *to* [of] the laws and discriminates between classes contrary to Section 1 of the Fourteenth Amendment to the United States Constitution.

SEVEN

The indiciement fails to allege any facts or circumstances showing the commission of any public offense

or the violation of any law of the State of Mississippi.

WHEREFORE defendants pray that the Court upon consideration hereof, sustain this DEMURRER to the indictment and dismiss the indictment and order the defendants discharged with *their* costs, and defendants pray for such other and further relief as *they* may show *themselves* justly entitled to.

(Signed) G. C. Clark

" Grover C. Powell

" Hayden C. Covington

Attorneys for Defendants

STATE OF MISSISSIPPI, WARREN COUNTY

I, G. C. Clark, Attorney of record for defense, state that this demurrer is not filed for delay only, but that I believe he has a just and meritorious cause for said demurrer and that same should be sustained.

(Signed) G. C. Clark

ENDORSED:

FILED: JULY 10, 1942,
W. J. FOLEY, CLERK.

Order Overruling Demurrer

And afterwards, to-wit: On the 20th day of July, A.D., 1942, the same being a day of the regular July Term, 1942, the following entry was made on the Minutes of said Court on page 222 of Minute Book "A-2", to-wit:

No. 4280

THE STATE vs. CLEM CUMMINGS

Distributing Printed Matter to Encourage Disloyalty to the U. S. Government

Came on for hearing this day, defendant's Demurrer to Indictment filed against him, and the Court having heard and considered the same, is of the opinion that said demurrer should be overruled;

It is thereupon considered by the Court and so ordered that said Demurrer be, and same is hereby overruled.

Motion to Quash Indictment

And afterward, to-wit: On the 20th day of July, A.D., 1942, the same being a day of the regular July Term 1942, the defendant filed his Motion to Quash Indictment, which said motion is in the words and figures as follows, to-wit:

IN THE CIRCUIT COURT OF
WARREN COUNTY, MISSISSIPPI
9TH JUDICIAL DISTRICT

STATE OF MISSISSIPPI vs. CLEM CUMMINGS,
Defendant

Now come the above named defendants in the above entitled and numbered cause and file this *their* MOTION TO QUASH THE INDICTMENT returned and filed herein against *them*, and as grounds therefor say:

O N E

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is void on its face and unconstitutional because Section 1 thereof deprives the citizens and residents of Mississippi, and particularly *these* defendants, of their rights of freedom to worship Almighty God according to the dictates of *their* conscience, freedom of press and freedom of speech, contrary to Sections 13, 14, 18 and 32 of Constitution of the State of Mississippi, the First Amendment Section 1 of the Fourteenth Amendment to the United States Constitution.

T W O

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional as construed and applied to the activity of *these* defendants because Section 1 thereof deprives *these* defendants of *their* inherent rights of freedom to worship Almighty God according to the dictates of *their* conscience, freedom of press and freedom of speech, contrary to Sections 13, 14, 18

and 32 of the Constitution of the State of Mississippi and the First Amendment and Section 1 of the Fourteenth Amendment to the United States Constitution.

THREE

The statute under which the indictment is drawn, known as House Bill 689 of the regular Legislative Session 1942, is unconstitutional because Section 1 thereof is unreasonable and in excess of the police powers of the State of Mississippi, thereby permitting the denial of liberty without due process of law, contrary to Section 14 of Article 3 of the Mississippi Constitution and Section 1 of the Fourteenth Amendment to the United States Constitution.

FOUR

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because Section 1 thereof is vague, too general, indefinite and permits speculation on the part of the jury and court trying the cause, thus constituting a dragnet, both on its face and as construed and applied, all contrary to Section 14 of Article 3 of the Mississippi Constitution and Section 1 of the Fourteenth Amendment to the United States Constitution.

FIVE

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because Section 2 thereof is unreasonable and in excess of the police power of the state, and is vague, indefinite and a dragnet, in violation of Section 1 of the Fourteenth Amendment to the United States Constitution.

SIX

The statute under which the indictment is drawn, know as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because the entire statute denies equal protection of the laws and discriminates between classes contrary to Section 1 of the Fourteenth Amendment to the United States Constitution.

SEVEN

The indictment fails to allege any facts or circumstances showing the commission of any public offense or the violation of any law of the State of Mississippi.

WHEREFORE defendants pray that the Court upon consideration hereof, sustain this MOTION TO QUASH the indictment and dismiss the indictment and order the defendants discharged with *their* costs, and defendants pray for such other and further relief as *they* may show *themselves* justly entitled to.

G. C. Clark
Grover C. Powell
Hayden C. Covington

Attorneys for Defendants

ENDORSED & FILED:
JULY 20, 1942,
W. J. FOLEY, CLERK.

Order Overruling Motion to Quash Indictment

And afterwards, to-wit: On the 20th day of July, A.D. 1942, the same being a day of the regular Term 1942, the following entry was made on the Minutes of the Court on page 222 of Minute Book "A-2", to-wit:

No. 4280

THE STATE vs. CLEM CUMMINGS

Distributing Printed Matter to encourage Disloyalty to the U.S. Government

Came on for hearing this day, Motion to Quash Indictment filed by the Defendant and the Court having heard and considered the same is of the opinion that said Motion should be overruled:

It is thereupon ordered and adjudged that said Motion to Quash Indictment be, and the same is hereby overruled.

First Motion for Peremptory Instruction

And afterwards to-wit: On the 20th day of July A.D. 1942 the same being a day of the regular July Term A. D. 1942, the defendant filed his Motion for Peremptory Instruction, which said motion is in the words and figures as follows, to-wit:

IN THE CIRCUIT COURT OF
WARREN COUNTY, MISSISSIPPI

NINTH JUDICIAL DISTRICT

No. 4280

STATE OF MISSISSIPPI vs. CLEM CUMMINGS,
Defendant (s)

Now come the above Defendants in the above entitled and numbered cause and file this *their* MOTION FOR PEREMPTORY INSTRUCTION at the close of the State's evidence and before the defendants offer any evidence, and as grounds for this motion say :

O N E

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is void on its face and unconstitutional because Section 1 thereof deprives the citizens and residents of Mississippi, and particularly these defendants, of their rights of freedom to worship Almighty God according to the dictates of their conscience. freedom of press and freedom of speech, contrary to Sections 13, 14, 18 and 32 of the Constitution of the State of Mississippi, the First Amendment to the United States Constitution, and Section 1 of the Fourteenth Amendment to the United States Constitution.

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional as construed and applied to the activity of *these* defendants because Section 1 thereof deprives *these* defendants of their inherent rights of freedom to worship Almighty God accord-

ing to the dictates of *their* conscience, freedom of press and freedom of speech, contrary to Sections 13, 14, 18 and 32 of the Constitution of the State of Mississippi and the First Amendment and Section 1 of the Fourteenth Amendment to the United States Constitution.

THREE

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because Section 1 thereof is unreasonable and in excess of the police powers of the State of Mississippi, thereby permitting the denial of liberty without due process of law, contrary to Section 14 of Article 3 of the Mississippi Constitution and Section 1 of the Fourteenth Amendment to the United States Constitution.

FOUR

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because Section 1 thereof is vague, too general, indefinite and permits speculation on the part of the jury and court trying the cause, thus constituting a dragnet, both on its face and as construed and applied, all contrary to Section 14 of Article 3 of the Mississippi Constitution and Section 1 of the Fourteenth Amendment of the United States Constitution.

FIVE

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because Section 2 thereof is unreasonable and in excess of the police power of the state, and is vague, indefinite and a dragnet in violation of Section 1 of the Fourteenth Amendment to the United States Constitution.

S I X

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because the entire statute denies equal protection of the laws and discriminates between classes contrary to Section 1 of the Fourteenth Amendment to the United States Constitution.

S E V E N

The State has wholly failed to offer any evidence whatsoever as to the defendants' guilt, and the undisputable evidence shows that the defendants are not guilty of violating any law of the State of Mississippi, and *are* not guilty of the act charged in the indictment.

WHEREFORE the defendants pray that the Court sustain this motion for peremptory instruction, exclude all the evidence offered by the State and instruct the jury to acquit the defendants and by their verdict say, "We the jury find the defendants not guilty," and render a judgment dismissing the indictment and discharging the defendants with *their* costs, and defendants pray for such other further relief as *they* may show *themselves* justly entitled to.

(Signed) G. C. Clark
" Grover C. Powell
" Hayden C. Covington

Attorneys for Defendants

ENDORSED:
FILED July 20, 1942
W. J. FOLEY, CLERK.

Order Overruling Motion for Peremptory Instruction

And afterwards, to-wit: On the 20th day of July, A.D. 1942, the same being a day of the regular July Term 1942, the following entry was made on the Minutes of the Court on page 221 of Minute Book "A-2", to-wit:

No. 4280

THE STATE vs. CLEM CUMMINGS

Distributing Printed Matter to Encourage Disloyalty to the U. S. Government

The motion for peremptory instruction, which was duly filed at the close of the State's evidence, by defendants herein, came on for consideration and the Court, after having heard argument of counsel thereon, is of the opinion that the same should be overruled. Accordingly it is hereby

ORDERED, ADJUDGED and DECREED that said motion to give peremptory instruction is overruled, to which action of the Court the defendants are allowed an exception.

(Signed) R. B. Anderson, Judge, Circuit Court

Instructions

And afterwards, to-wit: On the 20th day of July, 1942, the same being a day of the regular July Term A.D. 1942, the following **INSTRUCTIONS** were **ASKED** by the **STATE** and the **DEFENDANT** and were **GIVEN** and **REFUSED** as follows, to-wit:

Instructions Given State

The Court instructs the Jury for the State, that if you believe from all the evidence in this case, beyond a reasonable doubt, that the defendant, Clem Cummings, did, then and there wilfully, unlawfully, feloniously and intentionally distribute printed matter, designed and calculated to encourage disloyalty to the United States Government, and the State of Mississippi, which said printed matter so distributed was then and there in book form, designated or entitled: "Children", and said book entitled: "Children" being attached hereto and made a part of said indictment as though copied fully herein; and all of which reasonably tended to create an attitude of stubborn refusal to salute, honor or respect the flag or Government of the United States, or of the State of Mississippi, then the defendant is guilty as charged in the indictment, and it is the duty of the jury to so find.

GIVEN AND FILED:

July 20, 1942

W. J. FOLEY, CLERK

The Court charges the Jury for the State, that you do not have to actually know that the defendant is guilty before you can convict him. It is only necessary that you should believe from all the evidence in this case, beyond a reasonable doubt, that he is guilty, and if you do so believe from all the evidence in this case, beyond a reasonable doubt, that the defendant is guilty, then it is your duty to so find.

GIVEN AND FILED:

July 20, 1942

W. J. FOLEY, CLERK

The Court further instructs the Jury for the State, that if in this case you find the defendant guilty, then your verdict may be in the following form, to-wit:

"We, the Jury, find the defendant guilty as charged in the indictment."

GIVEN AND FILED:

July 20, 1942

W. J. FOLEY, CLERK

Instructions Given Defendant

You are instructed that Jehovah's witnesses have a right to believe, if they so desire, that to salute the flag is worshipping an image, and if they decline to salute the flag on this ground, the same would not be in violation of any law as charged under the indictment. To force one to salute the flag contrary to conscientious scruples as result of his faith and belief and contrary to his form of worship, would be in violation of the First and Fourteenth Amendments to the Constitution of the United States; and you cannot consider defendants refusal to so salute in arriving at your verdict.

GIVEN AND FILED:

July 20, 1942

W. J. FOLEY, CLERK

The term "Reasonable doubt" is a doubt which makes you hesitate as to the correctness of the conclusion which you reach. If under your oaths and upon your conscience and after you have fully investigated the credible evidence and compared it in all of its parts you can say, 'I doubt if he is guilty', then it is a reasonable doubt. It is a doubt which settles in your judgment and finds a resting place there, and which produces in your mind a grave uncertainty as to the verdict to be given.

GIVEN AND FILED:

July 20, 1942

W. J. FOLEY, CLERK

You are instructed that there is no statute or law of the State of Mississippi which requires an adult person not in attendance at the public schools to perform the salute to the American flag or any flag, and in arriving at your verdict you cannot consider the fact that the defendant refused to salute or now refuse to salute the American flag.

GIVEN AND FILED:

July 20, 1942

W. J. FOLEY, CLERK

The court instructs the jury that the State must prove that the defendant did disseminate the teachings in question with the willful intent to cause disloyalty and disrespect to the flag and government of the United States and of the State of Mississippi and a stubborn refusal to salute the flag of the United States and unless you believe that that was true beyond every reasonable doubt, then your verdict should be, "We, the jury find the defendant not guilty".

GIVEN AND FILED:

July 20, 1942

W. J. FOLEY, CLERK

Instructions Refused Defendant

The Court instructs the jury for the defendant that your verdict should read, "We the jury find the defendant not guilty as charged".

REFUSED AND FILED:

July 20, 1942

W. J. FOLEY, CLERK

You are instructed that words spoken or printed must be more than a theoretical discussion, and before such can be made the basis of a conviction, you must find from the evidence beyond a reasonable doubt that such words are of such a nature as to create a clear, immediate and present danger that they will bring about the overthrow by force and violence of the Constitution, laws and government of the State of Mississippi and the United States, which you must find from the evidence beyond a reasonable doubt to be a clear, immediate and present danger. If you fail so to find or have a reasonable doubt thereof, defendant is entitled to an acquittal.

REFUSED AND FILED:

July 20, 1942

W. J. FOLEY, CLERK

You are instructed that in this country every citizen has the absolute right to freely distribute literature and to speak freely upon any subject and thereby express himself and give any opinion concerning any matter without being held answerable therefor to the State of Mississippi, so long as he does not advocate the overthrow of the government, the Constitution and laws thereof, by himself or others, by force and vio-

lence, and if you so find, or if you have a reasonable doubt thereof, you will acquit defendant.

REFUSED AND FILED:

July 20, 1942

W. J. FOLEY, CLERK

You are instructed that the defendant has a legal right to print, sell, publish, circulate and otherwise distribute literature which attacks any religious principle, dogma, or doctrine, or any political belief, dogma, or doctrine, and to persuade others to his point of view, the defendant may resort to exaggeration, to vilification of men who have been or are prominent or now in church and state, because the people have ordained in the light of history, that in spite of excesses and abuses this liberty is essential to enlightened opinion and democracy, and if there is any evidence of such you will not consider it in arriving at your verdict.

REFUSED AND FILED:

July 20, 1942

W. J. FOLEY, CLERK

The defendant offered in evidence and contends that he does not advocate or teach orally or in writing not to salute the flag or not bear arms in defense of the country, but that he merely declares the commands of Almighty God with reference thereto. If you find and believe that the defendant does not advocate and teach, but merely declares the commands of Almighty God, or if you have a reasonable doubt thereof, you will acquit the defendant.

REFUSED AND FILED:

July 20, 1942

W. J. FOLEY, CLERK

You are instructed that according to Section 6 of Article 3 of the Constitution of the State of Mississippi the people of this State have the inherent right to alter and abolish their form of government whenever they deem it necessary to their safety and happiness, and every person has the right to advocate a change in the form of government provided that he does not advocate the overthrow thereof by force and violence; and if you find or believe from the evidence, or have a reasonable doubt, that the defendant advocated the establishment in due time of God's Kingdom described by the defendant as Jehovah's Theocracy, as foretold in the Bible, and if you find and believe from the evidence, or have a reasonable doubt, that the defendant in advocating the establishment of such Theocracy does not urge a change in the present form of government by force and violence, you will acquit the defendant and by your verdict say: "We the jury find the defendant not guilty".

REFUSED AND FILED:

July 20, 1942

W. J. FOLEY, CLERK

You are instructed that under Section 13 of Article 3 of the Constitution of the State of Mississippi freedom of press and of speech shall be held sacred, and the State cannot interfere with the exercise thereof so long as the individual does not advocate the overthrow of the government by force and violence.

REFUSED AND FILED:

July 20, 1942

W. J. FOLEY, CLERK

You are instructed that under Section 18 of Article 3 of the Constitution of the State of Mississippi each and

every inhabitant of the State is granted free enjoyment of all 'religious sentiments' and the different modes of worship shall be held sacred and the right thereby secured to every one to worship God according to the dictates of his conscience shall not be interfered with or denied by law unless the exercise thereof is injurious to public morals and dangerous to the peace and safety of the State, from which exercise of the right said danger must be found to be clear, immediate and present and not speculative in any indefinite time in the future. If you believe or find from the evidence, or have a reasonable doubt, that the defendant in the performance of the acts charged in the indictment was exercising his right to worship Almighty God according to the dictates of his conscience in distribution of said literature, and you further find that the exercise of such right does not endanger immediately, clearly and presently the peace and safety of the State, then you will acquit the defendant and by your verdict say: "We the jury find the defendant not guilty".

REFUSED AND FILED:

July 20, 1942

W. J. FOLEY, CLERK

You are instructed that according to the case of *Ex parte Milligan*, decided by the Supreme Court of the United States during the Civil War, reported in 4 Wall. 2, 'The Constitution of the United States is a law for *rulers* and people equally in war and peace; it covers with the shield of its protection all classes of men at all times and under all circumstances. No doctrine involving more pernicious consequences was ever invented by the mind of man than that any of its provisions can be suspended during any of the great exigencies of government. Such a doctrine leads directly to anarchy

and despotism. But the theory of necessity on which it is based is false for the government within the Constitution has all the powers granted to it which are necessary to preserve its existence.

REFUSED AND FILED:

July 20, 1942

W. J. FOLEY, CLERK

You are instructed that regardless of how ridiculous, unreasonable and objectionable a particular belief or practice with reference to the laws laid down by the Creator in the Bible may appear to be, to permit the judge or jury to intrude their powers into the field of opinion and to restrain the profession or propagation of principles alleged to be based on the Bible on the supposition of their ill tendency is a dangerous fallacy which destroys all freedom of worship of Almighty God. It is not for you to say that the activity of the defendant is not an act of worship. You must assume that it is and can only convict the defendant for the exercise thereof in this case when you find or believe that he advocates the overthrow of the government by force and violence, clearly, immediately and presently.

REFUSED AND FILED:

July 20, 1942

W. J. FOLEY, CLERK

You are instructed that the defendant has the right to worship Almighty God according to the dictates of the heart, to adopt and to hold any opinion whatsoever on the subject of the Bible, and to do any act such as to distribute the literature in question, or to forbear to do any act such as to refuse to salute the flag of the United States, the doing or the forbearing of which does not

seriously and immediately endanger the public morals, health and safety.

REFUSED AND FILED:

July 20, 1942

W. J. FOLEY, CLERK

You are instructed that according to the Constitution of the State of Mississippi no defendant in a criminal case can be convicted for the crime of sedition or treason except from the mouths of two witnesses other than the defendant himself.

REFUSED AND FILED:

July 20, 1942

W. J. FOLEY, CLERK

Evidence has been offered that defendant takes a position of strict neutrality as to the wars between nations of the world, and because of such position they refuse to participate in any capacity for any nation in such wars. You are specially instructed that such evidence is immaterial to the charge of sedition and should be disregarded and not considered in arriving at your verdict.

REFUSED AND FILED:

July 20, 1942

W. J. FOLEY, CLERK

Freedom of speech and freedom of the press are guaranteed and protected by the Constitutions of Mississippi and the United States, and this liberty is not confined to newspapers but necessarily embraces pamphlets and leaflets pertaining to matters of government and the Bible. If you find and believe from the

evidence or have a reasonable doubt that defendant *were* engaged in activity of 'free press' and 'free speech' you will acquit the defendant and you by your verdict will say: "We the jury find the defendant not guilty".

REFUSED AND FILED:

July 20, 1942

W. J. FOLEY, CLERK

You are instructed that defendant and all other of Jehovah's witnesses have a right to call upon the people and to knock on the doors and to ring the doorbell at the homes of the people, and to bring to the attention of the people the recorded Word of God, by means of the literature which they distribute and the phonograph records which are used to reproduce recorded Bible talks; and that to knowingly and willfully endeavor to deprive them of such civil liberties guaranteed under the First and Fourteenth Amendments to the United States Constitution by color of state law would be in violation of Sections 51 and 52 of Title 18, United States Code Annotated.

REFUSED AND FILED:

July 20, 1942

W. J. FOLEY, CLERK

Motion for Directed Verdict

And afterwards, to-wit: On the 20th day of July A.D. 1942 the same being a regular day of the July Term A.D. 1942, the following Motion was filed by the defendant, said Motion being in the following words and figures as follows, to-wit:

IN THE CIRCUIT COURT OF
WARREN COUNTY, MISSISSIPPI
NINTH JUDICIAL DISTRICT

No. 4280

STATE OF MISSISSIPPI vs. CLEM CUMMINGS,
Defendant (s)

Now come the above defendants in the above entitled and numbered cause and file this *their* MOTION FOR DIRECTED VERDICT at the close of the case and when all evidence is in, and as grounds therefor say:

O N E

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is void on its face and unconstitutional because Section 1 thereof deprives the citizens and residents of Mississippi, and particularly these defendants, of their rights of freedom to worship Almighty God according to the dictates of their conscience, freedom of press and freedom of speech, contrary to Sections 13, 14, 18 and 32 of the Constitution of the State of Mississippi, the First Amendment to the United States Constitution, and Section 1 of the Fourteenth Amendment to the United States Constitution.

T W O

The statute under which the Indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional as construed and applied to the activity of these defendants because Section 1 thereof deprives these defendants of their inherent rights of freedom to worship Almighty God according to the dictates of their conscience, freedom of press

and freedom of speech, contrary to Sections 13, 14, 18 and 32 of the Constitution of the State of Mississippi, and the First Amendment and Section 1 of the Fourteenth Amendment to the United States Constitution.

T H R E E

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because Section 1 thereof is unreasonable and in excess of the police powers of the State of Mississippi, thereby permitting the denial of liberty without due process of law, contrary to Section 14 of Article 3 of the Mississippi Constitution and Section 1 of the Fourteenth Amendment to the United States Constitution.

F O U R

The statute under which the indictment is drawn, known as House Bill 689, of the Regular Legislative Session 1942, is unconstitutional because Section 1 thereof is vague, too general, indefinite and permits speculation on the part of the jury and court trying the cause, thus constituting a dragnet, both on its face and as construed and applied, all contrary to Section 14 of Article 4 of the Mississippi Constitution and Section 1 of Fourteenth Amendment to the United States Constitution.

F I V E

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because Section 2 thereof is unreasonable and in excess of the public police power of the state, and is vague, indefinite and a dragnet, in violation of Section 1 of the Fourteenth Amendment to the United States Constitution.

S I X

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because the entire statute denies equal protection of the laws and discriminates between classes contrary to Section 1 of the Fourteenth Amendment to the United States Constitution.

S E V E N

The indictment fails to allege any facts or circumstances showing the commission of any public offense or the violation of any law of the State of Mississippi.

E I G H T

The State has wholly failed to offer any evidence whatsoever as to the defendants' guilt, and the undisputable evidence shows that the defendants are not guilty of violating any law of the State of Mississippi, and are not guilty of the act charged in the indictment.

WHEREFORE defendants pray that upon consideration hereof the Court exclude all the evidence, grant this motion and instruct the jury to acquit the defendants and by their verdict say, "We the jury find the defendants not guilty," and render a judgment dismissing the indictment and discharging the defendants with their costs, and defendants pray for such other and further relief as they may show themselves justly entitled to.

ENDORSED: (Signed) G. C. Clark
 FILED July 20, 1942 Grover C. Powell
 W. J. FOLEY, CLERK. Hayden C. Covington

Attorneys for Defendants

Order Overruling Motion of Defendant to Peremptorily Instruct the Jury

And afterwards, to-wit: On the 20th day of July, A.D. 1942, the same being a day of the regular July Term, the following entry was made on the Minutes of the Court on page 222 of Minute Book "A-2", to-wit:

No. 4280

THE STATE vs. CLEM CUMMINGS

Distributing Printed Matter to Encourage Disloyalty to the U. S. Government.

This cause came on this day for hearing on the Motion of the Defendant to Peremptorily Instruct the Jury to find for the Defendant, and the Court having heard and considered the same is of the opinion that said motion should be overruled;

It is thereupon considered by the Court and so ordered that said motion be and the same is hereby overruled.

Verdict

And afterwards, to-wit: On the 20th day of July, A.D., 1942, the same being a day of the regular July Term 1942, the following entry was made on the Minutes of the Court on page 222 of Minute Book "A-2", to-wit:

THE STATE vs. CLEM CUMMINGS

Distributing Printed Matter to Encourage Disloyalty to the U. S. Government.

Again came the District Attorney who prosecutes for and on behalf of the State, and again came the defendant in his own proper person, attended by his counsel, and also came a good and lawful jury to-wit: M. L. McElligott and eleven others who were empanelled and sworn to well and truly try the issue joined and a true verdict give, according to the law and the evidence, and after hearing the evidence, arguments of counsel, received the instructions of the Court, retired to consider their verdict, and afterwards returned into open Court the following verdict to-wit:

“We, the Jury, find the Defendant Guilty as charged in the Indictment.”

It is thereupon considered by the Court and so ordered that said defendant be, and he is hereby remanded to await sentence.

Sentence

And afterwards, to-wit: On the 22nd day of July, A.D., 1942, the same being a day of the regular July Term, 1942, the following entry was made on the Minutes of the Court on page 225 of Minute Book “A-2”, to-wit:

No. 4280

STATE vs. CLEM CUMMINGS

Distributing Printed Matter to Encourage Disloyalty to the U. S. Government.

This cause coming on this day for further hearing, and the said Defendant, Clem Cummings, having been convicted on a former day of this term of Court of the offense charged against him, to-wit: Distributing printed matter to encourage disloyalty to the United States of America, by a Jury of twelve (12) good and lawful men as appears of record in the minutes of this Court at this term on a former day, and the Defendant being brought before the Court in his own proper person and asked if he had anything to say as to why the judgment of the law should not be pronounced against him, said nothing.

It is, therefore, ordered by the Court that the said Defendant Clem Cummings, for such his offense of which he stands convicted, be and he is hereby sentenced to prison in the State Penitentiary for the period or duration of the present war in which the United States of America is engaged, which war is commonly known as World War Number Two, and that said Defendant be so held in prison until said War has in all respects been ended and peace declared by all Nations engaged therein, provided that said imprisonment shall not continue and be in effect for more than a period of Ten (10) years from this date.

It is further ordered by the Court that the said defendant be remanded to the County Jail and there safely kept until called for by the proper authorities.

Motion for New Trial

And afterwards, to-wit: On the 20th day of July A.D. 1942, the same being a day of the regular July Term 1942, the defendant filed his Motion for New Trial, which said motion is in the words and figures as follows, to-wit:

IN THE CIRCUIT COURT OF WARREN COUNTY, MISSISSIPPI FOR THE NINTH JUDICIAL DISTRICT July Term, 1942

No. 4280

MOTION FOR NEW TRIAL

STATE OF MISSISSIPPI vs. CLEM CUMMINGS

Now comes defendant in above styled and numbered cause and moves the Court to grant him a new trial and as grounds therefor says:

O N E

The Court erred in overruling defendant's motion for continuance.

T W O

The Court erred in overruling defendant's motion to quash.

T H R E E

The court erred in overruling defendant's Demurrer.

F O U R

The Court erred in admitting State's evidence objected to by defendant.

FIVE

The court erred in overruling defendant's motion for peremptory instruction at the close of the State's evidence.

SIX

The court erred in sustaining the State's objection to evidence offered by defendant.

SEVEN

The court erred in overruling defendant's motion for directed verdict.

EIGHT

The court erred in granting State's instructions No. 1, 2 and 3.

NINE

The court erred in refusing defendant's instructions No. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 17, 18.

TEN

The jury's verdict was contrary to law and evidence.

WHEREFORE defendant prays that the court set aside the verdict and grant him a new trial.

Clem Cummings
Defendant

By G. C. Clark
Attorney for Defendant

ENDORSED & FILED:
JULY 20, 1942,
W. J. FOLEY, CLERK.

Order Overruling Motion for New Trial

And afterwards, to-wit: On the 20th day of July, A.D. 1942, the same being a day of the regular July Term 1942, the following entry was made on the Minutes of the Court on page 222 of Minute Book "A-2", to-wit:

No. 4280

STATE vs. CLEM CUMMINGS

Distributing Printed Matter to Encourage Disloyalty to the U. S. Government

This cause came on this day for hearing upon the Motion for a New Trial filed by the Defendant, and the Court being fully advised in the premises is of the opinion that said Motion for a New Trial should be overruled;

It is thereupon considered by the Court and so ordered that said Motion be and the same is hereby overruled, and said defendant be and he is hereby allowed bail in the penal sum of Twenty-five Hundred (\$2500.00) Dollars, with good and sufficient sureties, duly conditioned according to law.

Petition for Appeal

And afterwards, to-wit: On the 20th day of July, A. D. 1942, the same being a day of the regular July 1942 Term, the Defendant filed his Petition to the Circuit Clerk for an Appeal in Criminal Cases, which said Petition is in the words and figures as follows, to-wit:

**PETITION TO THE CIRCUIT CLERK
FOR AN APPEAL IN CRIMINAL CASES**

No. 4280

The State of Mississippi vs. Clem Cummings

STATE OF MISSISSIPPI, WARREN COUNTY

**In the Circuit Court of Warren County,
July Term, 1942,**

TO The Circuit Clerk of Warren County:

Your petitioners, the undersigned Clem Cummings, respectfully states that, at the July Term, 1942 of said Court on the 20th day of July, 1942, he was convicted of Violating House Bill 689 of the Regular Legislative Session, 1942, and sentenced to serve in the State Penitentiary for the duration of the war. Feeling aggrieved at this conviction they pray an appeal to the Supreme Court and tenders herewith a good and valid appearance bond, with sureties, as required by law and asks that an appeal be granted.

**Clem Cummings
Defendant**

**By: G. C. Clark
Attorney for Defendant**

**ENDORSED & FILED:
JULY 20, 1942,
W. J. FOLEY, CLERK.**

Notice to the Court Reporter to
Prepare Record for Supreme Court

IN THE CIRCUIT COURT OF
WARREN COUNTY, MISSISSIPPI
FOR THE NINTH JUDICIAL DISTRICT

The State of Mississippi vs. Clem Cummings,
Defendant

I do hereby hand you this notice to prepare record for Supreme Court from your stenographic notes in the above styled and numbered cause.

The defendant herein mentioned, has petitioned and obtained an appeal in said cause, this the 20 day of July, 1942.

Clem Cummings
Defendant

By: G. C. Clark
Attorney for Defendant

ENDORSED & FILED,
JULY 20, 1942,
W. J. FOLEY, CLERK

Transcript of Testimony and Proceedings

On the 2nd day of September, 1942 there was filed with the Circuit Clerk of Warren County, Mississippi, the official court reporter's transcript of the testimony and proceedings had in the case of the State of Mississippi vs. Clem Cummings, tried at the July term, 1942 of the Circuit Court of Warren County, Mississippi, which is in words and figures as follows:

No. 4280

STATE OF MISSISSIPPI vs. CLEM CUMMINGS

Appearances:

T. J. Lawrence, District Attorney, J. J. O'Neill, County Attorney, and J. H. Culkin, of Culkin, Laughlin & Thames, present and representing the State.

G. C. Clark, present and representing the defendant.

The following proceedings were had and entered of record:

(A jury acceptable to both sides was secured)

BY MR. LAWRENCE: Gentlemen, I will read the indictment to you.

(Mr. Lawrence here read the indictment to the jury)

BY MR. CLARK: Gentlemen of the jury, you heard the reading of the indictment. The defendant pleads not guilty, and will set up his theory of what his case is—

BY THE COURT (Interposing): Don't state what your case is; it is not permitted in pleading to the indictment. Just plead not guilty.

BY MR. CLARK: All right, your Honor.

Tom Byrd (white), a witness for the State, after being duly sworn testified as follows:

DIRECT EXAMINATION

BY MR. LAWRENCE

Q What is your name?

A Tom Byrd.

Q Mr. Byrd, where do you live?

A Vicksburg.

Q How long have you lived in Vicksburg, Warren County, Mississippi?

A Since 1924.

Q What line of work are you engaged in?

A Jailer of Warren County.

Q How long have you served Warren County in the capacity of jailer?

A Since January, 1940.

Q Do you know the defendant on trial, Mr. Cummings?

A Yes sir.

Q Mr. Clem Cummings—do you know him?

A Yes sir.

Q How long have you known Mr. Cummings?

A Since April 11 of this year.

Q Where did you—first, where were you when you first formed your acquaintance with Mr. Clem Cummings?

A In the Warren County jail.

Q Did you see him there for some two or three days?

A Yes sir, something like that. I believe at that time he was in jail four or five days.

Q In what part of the jail was he when you saw him?

A He was brought in the jail by the officers, and I

locked him up downstairs; I didn't take him upstairs.

Q Did he give to you while in jail a book, or any literature of any kind?

A Yes sir.

Q Do you know the name of the book that he gave you?

A I think it is Children.

Q I hand you this book, and ask you to look at it and tell the jury whether or not that is the book that Mr. Clem Cummings gave you? (Hands book to witness)

A Yes sir.

BY MR. CLARK: We object to that book being introduced.

BY THE COURT: Over-ruled.

BY MR. LAWRENCE: I believe you would object to it.

Q Where was Mr. Clem Cummings when he gave you that book?

A He was in his cell, or in a room on the bottom floor; it is not a cell.

BY MR. CLARK: If the witness will read the entire book I will withdraw the objection.

BY THE COURT: The objection is over-ruled.

BY MR. CLARK: A book—as your Honor knows, you can't take excerpts from a book. It is the whole book.

Q Do you see the man in the courtroom that gave you that book?

A Yes sir, Mr. Cummings.

Q Sitting here by Mr. Clark, his attorney?

A Yes sir.

Q Is this the book that the defendant gave you (Indicating book previously mentioned) ?

A Yes sir.

Q I will ask you to please refer to Page 314, and see if you find a page in that book designated 314 ?

A Yes sir.

Q Was that page in the book when Mr. Cummings gave it to you ?

A Yes sir.

Q Has there been any change made in the writing in that book since Mr. Clem Cummings gave you that book ?

A No sir.

Q Is that book now in the original form in which it was when it was delivered to you ?

A It is.

BY MR. LAWRENCE: We will ask that this book be marked as Exhibit A to the testimony of Mr. Tom Byrd.

(The book above referred to was here identified by the court reporter as Exhibit A to the testimony of Mr. Tom Byrd. Exhibit A follows) :

BY THE COURT: You can point out to the jury any part of the book you desire.

BY MR. CLARK: Or all of it ?

BY THE COURT: Yes, the parts of it that you think are relevant to the case. It will be a burden on the jury to read the entire book. You can read part of it, but if you think it will do any good to read it all, you can read the whole thing.

Q Now, Mr. Byrd, why did Mr. Cummings give you this book ?

A I don't know why he gave it to me.

- Q Tell the Court and jury whether or not he discussed with you, at the time of delivering this book, the saluting of the United States flag?

BY MR. CLARK: We object.

BY THE COURT: Over-ruled.

- A I had been talking to Mr. Cummings. I don't think it was right at the time he gave me that book.

BY MR. CLARK: We object. They just charged that he distributed printed matter.

BY THE COURT: Over-ruled.

- A (Continuing) He did not at the time he gave me that book, but Mr. Cummings and I had been talking along those lines, and I asked him where he got his authority—

BY THE COURT (Interposing): That has nothing to do with it.

BY MR. LAWRENCE: I want to read passages of the book. I will read from—taken from the book which was delivered to Mr. Byrd. "Satan knows that his time is short, and therefore he is desperately trying to turn all persons, including the children, against God. (Revelation 12, 12, 17) Therefore Satan influences public officials and others to compel little children to indulge in idolatrous practices by bowing down to some image or thing, such as saluting flags and hailing men, and which is in direct violation of God's commandment. (Exodus 20; 1, 5). That is why in the last few years rules are made and enforced in the public schools compelling children of the Jonadabs, who are in a cove-

nant to do God's will, to indulge in the idolatrous practice of flag-saluting and hailing men. It is the influence of that subtle foe, the Devil, that has brought about this state of affairs, and now Satan's agents cause great persecution to be brought upon the parents and the children who insist on obeying the commandments of God. This makes the way of both parents and children more difficult, but at the same time it puts a test upon them and affords them the opportunity to prove their faith and obedience and to maintain their integrity towards God and his King."

BY MR. LAWRENCE: We offer this book as Exhibit A to the testimony of the witness, Mr. Byrd.

(This is the same book that had been previously offered in evidence by the State)

Q Now, Mr. Byrd, did the defendant on trial give you any other literature?

A Yes sir, he gave me a pamphlet called or named The Watchtower.

Q I hand you that, and ask you to observe it, and tell the Court and jury whether or not that is a document delivered to you by the defendant in the Warren County jail?

A Yes sir.

Q I will ask you to refer to Page 39 of this document: was that page in there at the time the defendant delivered it to you?

A Yes sir.

BY MR. LAWRENCE: We offer that as Exhibit B.

(The booklet or pamphlet above mentioned was

here identified by the court reporter as Exhibit B to the testimony of Tom Byrd)

BY MR. CLARK: We object because that wasn't mentioned in the indictment.

BY THE COURT: Is that true, that it wasn't mentioned?

BY MR. CULKIN: It says "Other pamphlets, of a more particular description to the grand jurors unknown."

BY THE COURT: I over-rule the objection.

(Following a conference at the Court's bench Mr. Lawrence withdrew the pamphlet) —

Q Was that book delivered to you by the defendant in the day or night time?

A In the day time.

Q Did you compel him to give it to you?

A No sir. His little boys came on visiting day, on the 14th of April, I believe. They brought some clothes, and there were several of these books in the box, and I delivered them to him, and he gave me this Watchtower to read, and I had been discussing it with him in the jail for sometime.

Q The place that the defendant gave you that book was in what County and State?

A Warren County, State of Mississippi.

BY MR. LAWRENCE: That is all.

CROSS EXAMINATION

BY MR. CLARK

Q Mr. Byrd, did you read that book?

A I can't say I read all of it.

- Q But you did read some of it?
A Some of it. I can't tell you what part I did read.
Q In reading any of it, did it make you have any less respect for your government?
A No sir.
Q Any less respect for your flag?
A No sir.
Q Any less respect for your country?
A No sir.

BY MR. CLARK: That is all.

REDIRECT EXAMINATION

BY MR. LAWRENCE

- Q You read that paragraph that I just read to the jury?
A Yes sir.
Q What influence did it have on you when you read that?
A I don't suppose it had any influence at all.
Q You simply ignored it, did you?
A Sure. It didn't affect me one way or the other.
Q You didn't read the entire book?
A No, I can't say I did; I sketched through it.
Q What impression did you gain by reading the book, relative to the teachings in the book with respect to the flag?
A Of course, I respect the flag. I asked Mr. Cummings where he got his authority for not wanting to salute the flag of this country, and he quoted Exodus 20: 1, 5, and I got the Bible—we were sitting in the office—and I read it and said, "I can't see where that forbids you all to salute the flag," and he said, "Well, we won't have any argument."

- Q And the book he gave you had a tendency to teach you, and did teach you, not to salute the flag of this government?
- A I don't believe it says not to salute the flag, does it?

BY THE COURT: That doesn't matter there.

RECROSS EXAMINATION

BY MR. CLARK

- Q In order to get it straight, what it does say, I will read this from it, Page 311, under the sub-head of Childbearing, on Page 311. I will read you from that, and ask if you have read that: "Childbearing". Marriage and childbearing are the means of carrying out the divine mandate to multiply and fill the earth. This mandate was given to righteous man and woman in Eden, and even so the mandate must be carried out by righteous men and women on the earth after Armageddon and who have received righteousness and the right to life from God by Jesus Christ. (Romans 6: 23; John 17: 3) From Eden to Armageddon it was not possible for the divine mandate to be carried out, for the reason that no righteous human creatures appeared on the earth qualified to carry it out. The divine mandate is unto life everlasting to righteous human creatures on the earth. After Armageddon only righteous human creatures will be on the earth. The Devil and all his wicked agents will then be completely disposed of, so that no wicked influence can be exercised over those of the earth. Then the children that are conceived in righteousness and brought forth in righteousness, by righteous parents, will be righteous, and they, being righteous,

in due time will be qualified to participate in carrying out the divine command. It was God's command that righteous Adam and Eve, without any hindrances or limitations such as set forth in the seventh chapter of First Corinthians and at First Timothy 5:11-14, should bring forth children. Clearly the men and women of the great multitude, because of their being righteous and having the right to life, will marry and bring forth children without hindrance. They will occupy and fill the place that no human creature could fill from the time of Eden to the Kingdom.

Should men and women, both of whom are Jondabs or "other sheep" of the Lord, now marry before Armageddon and bring forth children? They may choose to do so, but the admonition or advice of the Scriptures appears to be against it. Being married before Armageddon and both continuing faithful and surviving Armageddon, their marital relationship shall continue and persist after Armageddon. They receive their right to life everlasting after Armageddon, and after receiving that right to life their children then born would be born in righteousness. Children born before Armageddon of parents who had not received the right to life, would not be born with the right to life but would have the privilege of choosing to serve God and Christ and live if they prove their integrity. Otherwise stated, each one must individually choose and individually be tested.

The prophetic picture seems to set forth the correct rule, to-wit: The three sons of Noah and their wives were in the ark and were saved from the flood. They did not have any children, however, until after the flood. They began to have children two years after the flood. (Genesis 11: 10, 11) No chil-

dren were taken into the ark and none were born in the ark, and hence none were brought out of the ark. Only eight persons went in and eight came out of the ark. (1 Peter 3:20; Genesis 8:18) That would appear to indicate it would be proper that those who will form the "great multitude" should wait until after Armageddon to bring children into the world.

It is only a few years from the time the "other sheep" are gathered to the Lord until Armageddon. That entire period is a time of great tribulation, concluding with the greatest tribulation the world will ever have known. Speaking of that very time, Jesus says: "Woe unto them that are with child, and to them that give suck in those days!" —Matthew 24:19, 21.

That would seem to mean that those who would have infants during Armageddon would suffer much greater woe because of their care of the same. It is a great responsibility to rear children and care for them now, and it would be far greater difficulty to care for them during the time of the great tribulation upon the earth.

Jonadabs, or "other sheep" of the Lord, who are now married and have children are blessed with the great opportunity and the obligation to teach their children the Word of God and to show them the necessity of choosing the Lord and taking their stand on the side of The Theocracy and being fully obedient and loyal to the Kingdom. There is but one possible way their children can find protection and blessing, and that is by choosing the Lord and fleeing to the Lord and serving Him. Each one must choose for himself.

Satan knows that his time is short, and therefore he is desperately trying to turn all persons, includ-

ing the children, against God. (Revelation 12: 12, 17) Therefore Satan influences public officials and others to compel little children to indulge in idolatrous practices by bowing down to some image or thing, such as saluting flags and hailing men, and which is in direct violation of God's commandment. (Exodus 20: 1-5) That is why in the last few years rules are made and enforced in the public schools compelling children of the Jonadabs, who are in a covenant to do God's will, to indulge in the idolatrous practice of flag-saluting and hailing men. It is the influence of that subtle foe, the Devil, that has brought about this state of affairs, and now Satan's agents cause great persecution to be brought upon the parents and the children who insist on obeying the commandments of God. This makes the way of both parents and children more difficult, but at the same time it puts a test upon them and affords them the opportunity to prove their faith and obedience and to maintain their integrity toward God and his King. Both parents and children who are now consecrated to do the will of God should rejoice in their privilege of bearing the reproaches that fall upon them because of their faithfulness to The Theocracy under Christ. If they remain true and faithful to the Lord amidst such great persecution and opposition they may be fully assured that the Lord will shield and protect them and give them his great blessing through Armageddon and take them over into the new world to serve with joy forever. The Lord never forgets or forsakes those who are faithful to him.

UNTO LIFE

The divine mandate to multiply and fill the earth was to life of the creature. That mandate to the

"great multitude" is to life of the children they shall bring forth. The parents, then being justified and having the right to live which Adam lost and which Jesus bought for obedient men, will, by the Lord's grace, transmit life and the right to life to their children. There is no Scriptural reason why such child should die as a child. If that child, upon coming to the point of knowing good and evil, and hence to the point of individual, personal responsibility, then continues to obey God, it will live. God's law never changes, and it is written: "The soul that sinneth, it shall die." (Ezekiel 18:4) If a descendant of the "great multitude", after reaching personal responsibility, willfully sins, then he would suffer the penalty, not as a child, but as a grown-up. Righteous parents will bring up their infants in righteousness, and these will receive the blessings of the Lord. Such children will not inherit the result of Adam's sin. There would be no reason to conclude that the child would die as a child. But if as a grown-up person it becomes a willful lawbreaker of The Theocracy it will suffer destruction, from which there is no resurrection. —Jeremiah 31: 29, 30; Hebrews 6: 4-6.

The promise to these of the "great multitude" is that they shall bring forth children, not for trouble and pain, but to have joy. "There shall be no more thence an infant of days, nor an old man that hath not filled his days: for the child shall die an hundred years old: but the sinner, being an hundred years old, shall be accursed. They shall not labour in vain, nor bring forth for trouble; for they are the seed of the blessed of the Lord, and their offspring with them." (Isaiah 65: 20, 23) (This prophecy is considered at length in the book *Salvation*, chapter 7.)

Q (By Mr. Clark) Now, you read that, or did you read that good?

A Yes sir.

Q I would like to ask you then, was there anything said about the United States flag in that?

A No sir, not the United States flag.

Q It just says, in general, flags?

A Yes sir.

Q Is there anything in there that says for you, or the reader, not to salute the flag?

A No sir.

Q Then there is nothing in that passage that made you disrespect or love the flag of your great country any less, did it?

A I don't know; it just didn't affect me one way or the other. I admire our flag.

Q There is nothing said against our flag, is it?

A It speaks for itself, what it says.

BY MR. CLARK: That is all.

FURTHER REDIRECT EXAMINATION

BY MR. LAWRENCE

Q Mr. Byrd, doesn't this passage, in truth and in fact, teach that it is idolatrous to salute the flag of this country?

A That is what it says. It doesn't say this country.

Q And this book was given to you in Warren County, Mississippi?

A Yes sir.

BY MR. LAWRENCE: That is all.

FURTHER RECROSS EXAMINATION
BY MR. CLARK

Q This is what it says: "Therefore Satan influences public officials and others to compel little children to indulge in idolatrous practices by bowing down to some image or thing, such as saluting flags and hailing men." Doesn't it say that hailing men is just as idolatrous as saluting the flag?

A The book speaks for itself. I didn't memorize that.

Q But it does say this. I will let you look at it. (Hands book to witness) Read there what it does say, right down to there (indicating on book). That is what he is getting at and what I am getting at. Will you read that portion dealing with the flag and idolatrous practices?

A (Reading) "Satan knows that his time is short, and therefore he is desperately trying to turn all persons, including the children, against God. (Revelation 12: 12, 17) Therefore Satan influences public officials and others to compel little children to indulge in idolatrous practices by bowing down to some image or thing, such as saluting flags and hailing men, and which is in direct violation of God's commandment. (Exodus 20: 1-5) That is why in the last few years rules are made and enforced in the public schools compelling children of the Jonadabs, who are in a covenant to do God's will, to indulge in the idolatrous practice of flag-saluting and hailing men."

Q You read there about children of the Jonadabs: Do you know who the Jonadabs are, if they are Americans or German, or who they are?

A No sir, I don't know them when I see them.

BY MR. CLARK: That is all.

(Witness excused)

George E. Hogaboom (white), a witness for the State, after being duly sworn testified as follows:

DIRECT EXAMINATION

BY MR. LAWRENCE

Q General, what are your initials?

A George E.

Q Where do you live, General Hogaboom?

A Vicksburg.

Q How long have you lived in Vicksburg?

A About thirty five years.

Q Are you connected with the City of Vicksburg in any capacity?

A Chief of Police.

Q How long have you served as Chief of Police of Vicksburg?

A About five years.

Q Before your association with the City of Vicksburg, were you connected with the United States Army?

A With the National Guard.

Q How long were you with the National Guard?

A Ever since 1898.

Q Were you an officer in the United States Army during the World War?

A Yes sir.

Q And saw service overseas?

A Yes sir.

Q Do you know the defendant, Clem Cummings?

A Yes sir.

Q Where did you first see him?

A In the City Hall.

Q Could you tell us approximately the date?

A Well, it has been a couple of months ago I guess.

- Q General, was it in the morning or in the evening?
A I just don't remember.
Q Do you know whether or not the United States flag was within the courtroom of the City Hall of Vicksburg when the defendant was there?

BY MR. CLARK: We object to that. The question of the United States flag has nothing to do with this man's attitude.

BY THE COURT: I don't know if it has or not.

- Q Was there a flag in the City Hall at the time the defendant was present?
A Yes sir.
Q Did the defendant, Clem Cummings, refuse to salute—

BY MR. CLARK (Interposing): We object to that; it has nothing to do with the case.

BY THE COURT: He has not finished the question.

- Q Did the defendant, Clem Cummings, in the City Hall on the occasion you saw him when the flag was present, did he or not stubbornly refuse to salute the flag in the City Hall on that occasion?

BY MR. CLARK: We object to that.

BY THE COURT: Sustained. It is not charged in the indictment. It is not an offense for a man to refuse to salute the flag. He is charged here before the Court for teaching and distributing this literature.

- Q Did he make any statement relative to saluting the flag in the City Hall?

BY MR. CLARK: We object to that.

BY THE COURT: Take the jury out.

(The jury here retired from the courtroom)

Q General, had the defendant been taken into custody when he was at the City Hall?

A Yes sir.

Q Tell the Court just what he did.

A A flag was on display in the courtroom, and I requested all present to rise and salute the flag, which they failed and refused to do, and stated that it was idolatry; they were taught that.

BY THE COURT: Refusal to salute the flag doesn't come under this statute.

BY MR. CULKIN: When he said it was idolatry to do so?

BY THE COURT: That might throw light on it.

BY MR. CLARK: General Hogaboom, is it your custom on all occasions to have a flag in the room, and to be saluted at other times?

A No sir.

Q It was just this occasion?

A Yes sir.

BY THE COURT: What was your purpose? Was it because it was war time?

BY THE WITNESS: No, it was in the nature of evidence to the court.

BY MR. CLARK: Did you tell him that if he didn't answer, or if he did, that it might be used against him?

A No.

Q Was he in your custody at that time?

A Yes sir.

BY THE COURT: Bring the jury back.
(The jury here returned to the courtroom)

Q (By Mr. Lawrence, resuming direct examination): General, I believe you stated to the Court and jury that you first knew the defendant, Clem Cummings, down in the City Hall?

A Yes sir.

Q Were there any other persons in the City Hall at the time?

A Yes sir, the courtroom was full.

Q Were there white and colored people in the courtroom?

A Yes sir.

Q Now, the defendant—was he handcuffed at the time?

A No sir.

Q He was just there in the custody of the court?

A That is right.

Q There were some others there?

A That is right.

Q Now, General, did you have a flag there in the courtroom?

A Yes sir.

BY MR. CLARK: We object to that.

BY THE COURT: Over-ruled.

A (Continuing) Yes sir, it is there now.

BY THE COURT: I hold that his refusal to salute the flag is not competent evidence, but what he said there that would tend to show disrespect to the flag.

Q State whether or not the defendant, Clem Cum-

mings, made any remark relative to saluting the flag in the courtroom on that occasion?

BY MR. CLARK: We object to that.

BY THE COURT: Over-ruled.

A He said it would be idolatrous to do that and that it was contrary to their teaching.

Q General, I am going to ask you to please refer to that book (indicating Exhibit A to the testimony of Tom Byrd), and see what you gather from it, beginning on Page 314, beginning with "Satan."

A (Reading) "Satan knows that his time is short, and therefore he is desperately trying to turn all persons, including the children, against God. (Revelation 12: 12, 17) Therefore Satan influences public officials and others to compel little children to indulge in idolatrous practices by bowing down to some image or thing, such as saluting flags and hailing men, and which is in direct violation of God's commandment. (Exodus 20: 1-5) That is why in the last few years rules are made and enforced in the public schools compelling children of the Jonadabs, who are in a covenant to do God's will, to indulge in the idolatrous practice of flag-saluting and hailing men. It is the influence of that subtle foe, the Devil, that has brought about this state of affairs—(Interposing) From your reading there, and from your observation, state whether or not in your opinion this book teaches that saluting the flag—

BY MR. CLARK (Interposing) We object to that.

BY THE COURT: Sustained.

Q What does it teach?

BY MR. CLARK: We object.

BY THE COURT: Sustained.

BY MR. LAWRENCE: That is all.

CROSS EXAMINATION

BY MR. CLARK

Q General, when Mr. Cummings, the defendant, made the statement that you referred to, about it was idolatry to salute the flag, in court there, did he make that in the presence of all of the people, or just to you upon your request?

A My recollection is that it was in the courtroom, but I could be wrong about that, but that is my recollection.

Q Since you read that paragraph did it make you think any less of your country?

A No.

BY MR. CLARK: That is all.

REDIRECT EXAMINATION

BY MR. LAWRENCE

Q Such stuff as that wouldn't influence you in any respect, would it?

A No.

BY MR. LAWRENCE: That is all.

RECROSS EXAMINATION

BY MR. CLARK

Q It wouldn't influence any body who had good, com-

mon horse sense, would it ?

A Well, I wouldn't say that.

BY MR. CLARK: That is all.

(Witness excused)

N. H. Hullum (white), a witness for the State, after being duly sworn testified as follows:

DIRECT EXAMINATION

BY MR. LAWRENCE

Q You are Captain Hullum ?

A Yes sir.

Q You are employed by the City of Vicksburg ?

A Yes sir.

Q In what capacity ?

A Captain of Police.

Q How long have you been with the Police Department of this city ?

A About twenty two years.

Q Do you know Mr. Clem Cummings on trial ?

A Yes sir.

Q Did you see him at the City Hall some few months ago ?

A Yes sir.

Q You were present ?

A Yes sir.

Q Any other persons present on that occasion ?

A On the occasion when we had him in court there !

Q Yes.

A Yes sir, there was quite a few present. The court-room was pretty well filled, with some white and some negroes.

Q Any grown men in the court room ?

A Yes sir.

Q Any children in the courtroom?

A I don't remember any children right now.

Q Were there any women in the courtroom?

A Yes sir.

Q Were you present when the defendant was on trial in the city court?

A Yes sir.

Q Did he make a statement relative—did he make any statement at all in regard to the flag of his country, in the courtroom?

BY MR. CLARK: We object to that as not being relevant to this matter.

BY THE COURT: Over-ruled.

Q Did he make any statement relative to teaching, or saluting the flag, or not saluting the flag?

A Yes sir, he said he would not salute the flag, that they were taught not to salute it.

Q Did he teach others not to salute the flag in the courtroom?

A Yes sir.

Q Now, Captain, the defendant was on trial in the City Court when he made that statement?

A Yes sir.

Q Was he remanded to jail to await the action of the Grand Jury from that Court?

A Yes sir.

Q Do you know how long he remained in the Warren County jail before bond was made?

A I can't say. I know he was up here some time.

Q Do you know whether or not it was in the month of May, 1942?

A Yes sir.

Q April or May, 1942?

A Yes sir. I wouldn't say what date but it was along about that time; I haven't got the date with me.

Q Did he speak out there in the courtroom and make that statement publicly?

A Yes sir.

Q Was he brought from the City Hall to the Warren County jail?

A Yes sir.

Q Who is the County jailer here?

A Mr. Tom Byrd and Mr. Joe Barnes, Mr. Byrd was day jailer and Mr. Barnes was night jailer.

BY MR. LAWRENCE: That is all.

CROSS EXAMINATION

BY MR. CLARK

Q Captain Hullum, did you keep any record or have any made of what took place there that day? That is not a court of record, is it?

A There is a court record on it. I didn't keep any record myself.

Q Will you please state again what he said there in regard to saluting the flag—the exact words he said there?

A He was asked to salute the flag, and he said he was taught not to salute the flag, and he was asked by Mr. Lawrence if he was taught that, and he said he—"We were taught that."

Q He—did he say "they" or "we"?

A We.

Q Did he say anything about it being an idolatrous practice?

A I don't know what his words were, but he said they were taught not to kneel to any image, and Mr.

Lawrence said he was not asked to kneel. He was asked if he would tip his hat to a lady and he said he would, but he would not kneel.

Q That is what you heard him say there?

A That was just about his words, as near as I can repeat them.

Q Were you present while Mr. Lawrence was prosecuting the case?

A Yes sir.

Q And is that when you heard Mr. Cummings say what you say he said?

A Yes sir, while he was in court.

Q Did what he said there have any effect, or did you conclude that his statement in regard to the flag would have any adverse effect on your mind or lessen your respect for the flag in any way?

A No sir.

Q Or cause any disrespect to the flag or any disrespect for the Government: did that seem to be his purpose?

A I can't tell what he did it for.

Q He said it was due to his religious teaching?

A Yes sir.

BY MR. CLARK: That is all.

REDIRECT EXAMINATION

BY MR. LAWRENCE

Q That was out in the courtroom, among the colored and white people, when he made that statement?

A Yes sir.

Q Did he demand a copy of the charge in the case?

A Yes sir.

Q And he said, "We are teaching not to salute the

flag, and we refuse to salute it”?

A That is what he said, that he refused to salute it.

Q State whether or not he taught it before other people in the courtroom, not to salute the flag of his country?

A He refused to salute it. It must—

BY MR. CLARK (Interposing): We object to that.

BY THE COURT: That is ruled out, that he refused to salute the flag.

Q But he did say that “We refuse to salute the flag”?

A Yes sir.

Q State whether or not I asked him if he would salute the flag of this country, and whether or not he said he would teach people not to salute the flag?

BY MR. CLARK: We object to that.

BY THE COURT: You are putting the words in his mouth. Besides, it is coupled with matters that have already been ruled out.

BY MR. LAWRENCE: That is all.

FURTHER RE-CROSS EXAMINATION

BY MR. CLARK

Q But he did say it was due to—he gave you a vital reason for it?

A Yes sir, he said they were taught not to salute the flag, and did teach not to salute the American flag.

BY MR. CLARK: That is all.

FURTHER REDIRECT EXAMINATION

BY MR. LAWRENCE

Q Did he show you any Scripture in the courtroom not to salute the flag?

A No sir.

Q But he stated at the desk, and told you and taught you not to salute the flag, did he not?

A Yes sir.

BY MR. LAWRENCE: That is all.

FURTHER RECROSS EXAMINATION

BY MR. CLARK

Q That was in reply to some of your questions as to why he didn't salute the flag? The Court did question him, or the District Attorney did question him?

A I don't quite catch your question.

BY MR. CLARK: I withdraw it, your Honor.

BY MR. LAWRENCE: The State rests.

(At the request of Mr. Clark the jury was here taken from the courtroom)

(Mr. Clark here presented to the Court the following motion for a peremptory instruction in favor of the defendant, asking the court reporter to copy it in its entirety in the record):

MOTION FOR PEREMPTORY INSTRUCTION
IN THE CIRCUIT COURT OF
WARREN COUNTY, MISSISSIPPI
9 JUDICIAL DISTRICT

No. 4280

The State of Mississippi v. Clem Cummings,
Defendant(s)

Now come the above named defendants in the above entitled and numbered cause and file this their **MOTION FOR PEREMPTORY INSTRUCTION** at the close of the State's evidence and before the defendants offer any evidence, and as grounds for this motion say:

ONE

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is void on its face and unconstitutional because Section 1 thereof deprives the citizens and residents of Mississippi, and particularly these defendants, of their rights of freedom to worship Almighty God according to the dictates of their conscience, freedom of press and freedom of speech, contrary to Sections 13, 14, 18 and 32 to the Constitution of the State of Mississippi, the First Amendment to the United States Constitution, and Section 1 of the Fourteenth Amendment to the United States Constitution.

TWO

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional as construed and applied to the activity of these defendants because Sec-

tion 1 thereof deprives these defendants of their inherent rights of freedom to worship Almighty God according to the dictates of their conscience, freedom of press and freedom of speech, contrary to Sections 13, 14, 18 and 32 of the Constitution of the State of Mississippi and the First Amendment and Section 1 of the Fourteenth Amendment to the United States Constitution.

T H R E E

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because Section 1 thereof is unreasonable and in excess of the police powers of the State of Mississippi, thereby permitting the denial of liberty without due process of law, contrary to Section 14 of Article 3 of the Mississippi Constitution and Section 1 of the Fourteenth Amendment to the United States Constitution.

F O U R

The statute under which the indictment is drawn, known as House Bili 689, of the Regular Legislative Session 1942, is unconstitutional because Section 1 thereof is vague, too general, indefinite and permits speculation on the part of the jury and court trying the cause, thus constituting a dragnet, both on its face and as construed and applied, all contrary to Section 14 of Article 3 of the Mississippi Constitution and Section 1 of the Fourteenth Amendment to the United States Constitution.

F I V E

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because Section 2 thereof is unreasonable and in excess of the police pow-

er of the state, and is vague, indefinite and a dragnet, in violation of Section 1 of the Fourteenth Amendment to the United States Constitution.

SIX

The statute under which the indictment is drawn, known as House Bill 689, of the Regular Legislative Session 1942, is unconstitutional because the entire statute denies equal protection of the laws and discriminates between classes contrary to Section 1 of the Fourteenth Amendment to the United States Constitution.

SEVEN

The State has wholly failed to offer any evidence whatsoever as to the defendants' guilt, and the undisputable evidence shows that the defendants are not guilty of violating any law of the State of Mississippi, and are not guilty of the act charged in the indictment.

WHEREFORE the defendants pray that the Court sustain this motion for peremptory instruction, exclude all the evidence offered by the State and instruct the jury to acquit the defendants and by their verdict say, "We the jury find the defendants not guilty", and render a judgment dismissing the indictment and discharging the defendants with their costs, and defendants pray for such other and further relief as they may show themselves justly entitled to.

SIGNED G. C. Clark

Grover C. Powell

Hayden C. Covington

Attorneys for Defendants

BY THE COURT: I over-rule the motion.
(The jury here returned to the courtroom)

Mrs. Clem Cummings (white), a witness for the defendant, after being duly sworn testified as follows:

DIRECT EXAMINATION

BY MR. CLARK

Q Your name is Mrs. Clem Cummings?

A Yes sir.

Q Were you down at the trial the day that Mr. Clem Cummings, your husband, was tried in the Police Court?

A Yes sir.

Q Will you tell whether or not he told the crowd there that he taught—he or we taught—the people not to salute the flag?

A He did not.

Q He didn't tell that?

A No sir.

Q Was the flag question discussed out in the open there that day? Did Mr. Lawrence ask him anything about the flag, as prosecutor? Did he ask him whether or not he taught people not to salute the flag, or do you recall?

A I don't recall whether he did or not.

BY MR. CLARK: That is all.

CROSS EXAMINATION

BY MR. CULKIN

Q You are Mrs. Clem Cummings, are you not?

A Yes sir.

Q You are a working missionary in connection with the activities of the Jehovah's witnesses, are you not?

A Yes sir.

Q You go from house to house, in Vicksburg and other places, in connection with your work, and play graphophone records, do you not?

A Yes sir.

Q This graphophone takes the message that you are teaching to the people of the State, does it not?

A It is what I preach.

Q It is likewise what your husband preaches, by graphophone records and by books, *does* it not?

A Yes sir.

Q And you distribute the information contained in The Watchtower, do you not?

BY MR. CLARK: We object to that.

BY THE COURT: Sustained.

Q The same teachings which are presented by you are presented by your husband and other members of the organization?

BY MR. CLARK: We object to that. That would be an opinion.

BY THE COURT: Over-ruled.

Q In other words, you go out and teach that which is in this book, and in graphophone records, and in The Watchtower, and in Consolation; that is, other books?

A We repeat that to the people; it is all the Bible.

Q Explain what you mean when you preach to the people words which are contained in The Watchtower and other books, words of the following—

BY MR. CLARK (Interposing): We object to that. She is not on trial.

BY THE COURT: What is in The Watchtower is not admissible in evidence.

Q Do you or do you not teach that The American Legion is an organization—

BY MR. CLARK (Interposing): We object to what she teaches.

BY THE COURT: Let him finish the question.

BY MR. CULKIN: She says what she teaches is what her husband teaches. It is one and the same thing.

BY THE COURT: Ask the question.

Q In your teaching do you present to the public that it is idolatrous and wrong to salute the flag?

A I do not.

BY MR. CLARK: I do not.

Q You do distribute this book, do you not? (Indicates Exhibit A to testimony of Tom Byrd)

A Yes sir.

Q You had this book on last Thursday week, on Washington Street, and played a graphophone record, and tried to sell this book?

A I asked for a contribution.

Q What does it mean by saying in this book that they are trying to compel children to indulge in idolatrous practices, by bowing down to some image or thing, such as saluting flags and hailing men? Tell the jury what that means? /

A It means just what it says there.

Q Explain what it means—

BY MR. CLARK (Interposing): We object to that.

BY THE COURT: I sustain the objection. I don't believe she should be required to give their interpretation of what it means; the jury can do that.

Q What do you mean by Jonadab?

BY MR. CLARK: We object to that.

BY THE COURT: Over-ruled.

Q About whom are you talking when you talk about Jonadabs?

A The Lord, in the Bible, made a picture, and He used Jonadab as one who was taking a stand on the Lord's side, and he was asked if he was with Christ, and Jonadab said Yes.

Q In other words, the name Jonadab refers to a Biblical quotation wherein it listed certain people on the side of the Lord?

A Yes sir.

Q All of those who are not Jonadabs are not on the side of the Lord, according to these teachings?

A Not necessarily.

Q Those who are not Jonadabs are not on the side of the Lord, are they?

A It is not for me to say that.

Q I will ask what your book means, which your husband distributes, on Page 311, where it says Child-bearing, where it says those that are born before Armageddon would not be born with the right to life and therefore could not be saved.

BY MR. CLARK: We object to that.

BY THE COURT: Sustained.

Q What do you mean by Armageddon?

A It means the battle of God Almighty which will soon be fought.

Q You refer to the Armageddon that the Bible talks about, in which those who are against God are lined up on one side?

A Yes sir.

Q And you say those who are not Jonadabs are not on God's side?

A Everybody on God's earth has a chance to be on God's side?

Q Do you believe it is against the teachings of God to salute the American or any other flag?

BY MR. CLARK: We object to that.

BY THE COURT: Sustained.

Q Do you and your husband teach what is on this particular Graphophone record? (Refers to phonograph and record)

A Yes sir.

Q In truth and in fact, this is the same kind of record that has been brought in my office and other offices, and we have been asked to listen to it?

A No doubt it is.

(Mr. Culkin here started to operate the phonograph)

BY MR. CLARK: We object to that.

BY THE COURT: Sustained.

Q I believe you have testified that your husband and you, and other members of your organization, carry this book entitled Children, and deliver it for compensation or otherwise: is that true?

A Yes sir.

Q If there is no contribution there is no delivery?

A I can't say that.

Q Is this a book written by the organization, of which you and your husband are representatives, to teach people what is in this book and other books of similar type; is it gotten out by your organization?

A Yes sir.

REDIRECT EXAMINATION

BY MR. CLARK

Q In order to explain a little better about that book, I will ask you to read where the District Attorney read.

A (Reads) "The divine mandate to multiply and fill the earth was to life of the creature. That mandate to the "great multitude" is to life of the children they shall bring forth. The parents, then being justified, and having the right to life which Adam lost and which Jesus bought for obedient men, will, by the Lord's grace, transmit life and the right to life to their children. There is no Scriptural reason why such child should ever die as a child. If that child, upon coming to the point of knowing good and evil, and hence to the point of individual, personal responsibility, then continues to obey God, it will live. God's law never changes, and it is written: "The soul that sinneth, it shall die." (Ezekiel 18:4) If a descendant of the "great multitude", after reaching personal responsibility, willfully sins, then he would suffer the penalty, not as a child, but as a grownup. Righteous parents will bring up their infants in righteousness, and these will receive the blessings of the Lord. Such children will not in-

herit the result of Adam's sin. There would be no reason to conclude that the child would die as a child. But if as a grownup person it becomes a willful lawbreaker of The Theocracy it will suffer destruction, from which there is no resurrection.—Jeremiah 31: 29, 30; Hebrews 6: 4-6.

The promise to those of the "great multitude" is that they shall bring forth children, not for trouble and pain, but to have joy. "There shall be no more thence an infant of days, nor an old man that hath not filled his days: for the child shall die an hundred years old; but the sinner, being an hundred years old, shall be accursed. They shall not labour in vain, nor bring forth for trouble: for they are the seed of the blessed of the Lord, and their offspring with them."—Isaiah 65: 20, 23.

Q Do your people teach that it is wrong to salute the flag?

A Absolutely not.

BY MR. CLARK: That is all.

FURTHER CROSS EXAMINATION

BY MR. CULKIN

Q Tell the jury what, if anything, you meant by way of the direct statement in the City Hall as to whether or not what you taught—

BY MR. CLARK (Interposing): We object to that.

BY THE COURT: Over-ruled.

Q Just tell the jury what you said in your statement pertaining to the idolatrous act of saluting the flag in the City Hall?

A I said I was consecrated to do the will of Almighty God and obey all the commandments in the Bible. "Thou shalt have none other gods before me. Thou shalt not make unto thee any graven image or any likeness of anything that is in heaven above, or that is in the earth beneath, or that is in the waters under the earth. Thou shalt not bow down thyself unto them, nor serve them; for I, the Lord thy God am a jealous God, visiting the iniquity of the fathers upon the children of the third and fourth generation of them that hate me."

Q And you told them that "I not only believe that, but we teach others that that should be followed," didn't you?

A Yes sir.

Q You are not only familiar with that particular part of the word of God that says, "Thou shalt have no strange gods before me," but you know that that happened in Bible history, do you?

A Yes, it happened back in the days of the Israelites, God's typical people on earth.

Q Will you tell the jury the particular time and conditions under which it happened?

BY MR. CLARK: We object to that.

BY THE COURT: Sustained. That is testing her knowledge of Bible history.

A Is it true that when that utterance was made in Exodus, as narrated in the Biblical interpretation that you have outlined, that the Israelites were dancing around the golden calf, and Moses threw down the tablets? Is that true?

BY MR. CLARK: We object. That has nothing to do with it.

BY THE COURT: No.

Q How long have you been in Mississippi?

A Since the 31st of December, 1941.

Q You and your husband jointly teach the particular beliefs that are outlined in *Children*, and other books, do you not? You teach the same particular type, character and kind of belief to these people with whom you come in contact, do you not?

BY MR. CLARK: We object to that as her opinion of what her husband teaches.

A I leave the literature with the people, that they might look it up in the Bible.

Q You teach white and colored people alike, do you?

A No.

Q You have a number of colored people who sell these books, do you?

A We do.

Q You direct their efforts and direct their teachings, do you?

A They have colored people to do that.

Q You train them, do you?

A We don't take the literature to colored people.

Q But the colored people do it under your direction, do they? We are talking about saluting the flag, and you don't believe in saluting it, do you?

BY MR. CLARK: We object to that.

BY THE COURT: That has been gone over.

Q You stated you didn't believe in saluting the flag, the American flag or any other?

BY MR. CLARK: We object.

BY THE COURT: Over-ruled.

Q You have quoted Scripture—

A (Interposing) I answered it awhile ago; I gave Exodus 20: 3.

Q For that reason you don't salute the flag?

BY MR. CLARK: We object to it.

BY THE COURT: Over-ruled.

Q And for that reason you teach others not to salute the flag; is that true?

A No.

Q Did you tear that page out of your book, 314, about officials teaching children and others not to salute the flag? Did you tear it out of there?

A No, it was no purpose in tearing it out.

Q What publishing house sends all these things out through the mail, and otherwise?

A The Watchtower Bible & Tract Society, Inc.

Q When these books are sent out, are they sent through the mail?

A Yes sir.

Q They are distributed by you people after they come through the United States mail?

A Yes sir.

Q Where are you from?

A Urbana, Illinois.

Q Your husband was formerly connected with a railroad?

A Yes sir.

Q You and your husband and your two sons have been standing on Washington Street selling these books, have you not?

BY MR. CLARK: We object.

BY THE COURT: Over-ruled.

Q You and your husband and two children have been standing on Washington Street, on Saturday and other days, selling these particular books, have you not?

A We have.

Q You have also stood on the corner of Washington and Crawford Street and have delivered sermons and lectures relative to bowing down to graven images, have you not?

BY MR. CLARK: We object to that.

BY THE COURT: Over-ruled.

Q Do you know where Washington and Crawford Street is, where they have a clock on the corner?

A Yes.

Q And on the second Saturday in May, when there were some people standing there, and your oldest boy was making a talk, and you were distributing books; do you remember that? You remember when your oldest boy was preaching a sermon?

A No, I didn't see him.

Q And you were giving out books at the Boston Shoe Store?

A I was on the street but I didn't see what my boy was doing; I was busy doing what I was doing.

Q You know he makes talks on the street, do you?

A No sir.

Q You mean you haven't seen him on the street when you were walking by with these books, when he was making a talk in a very loud voice?

A I didn't see him.

Q But you were distributing books?

A I was half a block or a block down from him.

Q You were standing in front of Warner & Searles:

you know where that is, do you?

A Yes sir.

Q But before that you were up in the next block, were you?

A Yes sir.

Q But he was talking, and you don't know what he said, do you?

A I didn't hear him talking.

Q You saw him standing there, did you?

A I knew he was on the street.

Q In truth and in fact, he went out on the street for the particular purpose of making a talk to the public, didn't he?

A No, for placing the literature.

Q Have you ever heard either your husband or your sons make a talk on the subject here?

A No sir.

Q When they have services, do you attend?

A I do.

Q And you have people come in from different places, and you talk about these books, and about Jona-dabs, and about idolatry and saluting flags, and you don't hear him when he talks?

A I hear him in our meetings. We read the book and study it.

Q And make talks?

A No sir, we just study, and look up the Scripture. No one has ever made a talk at any of our meetings.

Q No one has ever made a talk on the street?

A No one that I know of. I never did.

Q How old is your oldest son?

A Twenty.

Q Is it not true in your teachings, and in the teachings of your husband, that you are against anyone enlisting in the military service of—

BY MR. CLARK (Interposing): We object to that.

BY THE COURT: That is not in the indictment. I sustain the indictment.

BY MR. CULKIN: That is all.

(Witness excused)

Clem Cummings (white), the defendant in the case, after being duly sworn testified as follows:

DIRECT EXAMINATION

BY MR. CLARK

Q Is this Mr. Clem Cummings, the defendant?

A Yes sir.

Q Mr. Cummings, you are charged with distributing this book, and that it was calculated and designed to teach disloyalty to the United States and the laws of the State of Mississippi, and a stubborn refusal to salute the flag. Is that the design of that book?

A No sir.

Q Read under the head of Authenticity of the Scriptures, beginning on Page 28, and we want to get enough in here to show the jury that the design of this book was not to teach disloyalty.

A (Reading from Exhibit A to the testimony of Tom Byrd)

“Authenticity.

What is the proof that the Bible contains the authentic record of God's word? The evidence, which furnishes the conclusive proof, is both circumstantial and direct, and the two kinds of evi-

dence fully corroborate each other. Here the evidence circumstantial and that which is direct will be considered together and will be found to fully establish the authenticity of the Bible as God's Word.

"The Bible" is the name given to what is written in the sixty-six books bound together and forming one book. It has in reality only one Author, who is God, and its one great purpose is to furnish a guide to man who desires to walk in the way of righteousness and live and to honor his Maker. The "canon" of the Scriptures is the collection or catalogue of the books or writings into one volume, **THE BOOK**, which sacred writings God has provided; and which is called "The Holy Bible". Such contains the true rule and guide for faithful men. Other writings for which claim has been made as to their genuineness, but which are spurious, are called "The Apocrypha".

The word "canon", from the classic Greek, means "a straight rod or rule". It is a measuring rod. As to the Bible, it means the rule of truth. Concerning this sacred rule the inspired apostle wrote: "And as many as walk according to this rule, peace be on them, and mercy, and upon the Israel of God." (Galatians 6:16; see also 2 Corinthians 10:13-16) Without any doubt the spirit of Almighty God directed faithful men to arrange the canon of the Scriptures according to his will. That much could not be said of any other book in existence. All the evidence, when considered together, proves beyond all doubt that the Author of the Holy Scriptures set out in the Bible is Almighty God, whose name is Jehovah, and which name means his purpose toward his creatures.

Moses, as a servant and an amanuensis of God,

wrote the five books that appear first in order in the Bible. Moses was selected by Jehovah God as his servant to lead the Israelites out of Egypt. At Mount Sinai God took Moses up into the mountain and there dictated to him the fundamental law, which law was written on stone, and which has been translated and recorded in the Bible.

The Scriptures disclose that God invites man to reason with him (Isaiah 1:18); and the fact that the Creator endowed man with faculties of reason shows that it is proper that man reach a conclusion by process of reasoning in harmony with facts and authority which cannot be disputed. Moses was a learned man, "learned in all the wisdom of the Egyptians." (Acts 7:22) Moses records the fact that God spoke to him and directed him to go into Egypt, saying: "Thus shalt thou say unto the children of Israel, I AM hath sent me unto you." (Exodus 3:14) "I AM" means the Everlasting One, not the One who was, nor the One who will be, but The One Who Is. The great I AM made known to Moses his name Jehovah, and this was the first time his name was thus revealed.—Exodus 6:2, 3.

The general history of the human kind could well have been known to Moses even before God revealed His great truth to Moses and before Moses was selected to go to Egypt, because of the following circumstances and facts, to wit: Adam was the original man, from whom the race sprang. Adam lived 930 years, and lived 300 years of that time after the birth of Enoch, a man whom God approved. Enoch was the father of Methuselah, who lived 969 years. Noah was the third generation from Enoch. He was a grandson of Methuselah and must have received much information from his grandfather. (Genesis 5:3-32) Noah was 600 years

old when the flood came. (Genesis 7:6) Being devoted to Almighty God, he would certainly gather all the information he could from his forefathers, and hence would have a very accurate account of the race from Adam to Noah's day. That information he would transmit to his sons.

Noah and his sons came out of the ark together, and Noah lived 350 years thereafter. (Genesis 9:28, 29) His son Shem lived 502 years after the flood. (Genesis 11:10, 11) Two years after Noah's death Abraham was born and therefore Shem and Abraham were on the earth together for a period of 150 years. It is reasonable that Abraham would learn from Shem the facts concerning the human race which Shem had received from his forefathers. Abraham bore the title of 'father of the faithful'; and since knowledge is necessary to faith, Abraham must have had as the basis of faith the necessary knowledge from the creation of man until his day.

Isaac was the beloved son of Abraham and would no doubt receive faithful instruction from his faithful father. The favorite son of Isaac was Jacob. (Genesis 28:5-14) Jacob had twelve sons, and he bestowed his greatest affection upon Joseph, evidently by the Lord's direction. Joseph was a man of great importance in Egypt and would be widely known by almost all of the people of Egypt, and particularly by the Israelites who resided there. Only a few years after the death of Joseph Moses was born. When Moses became a man he devoted himself entirely to the Almighty God. It is only reasonable that Moses was thoroughly familiar with the history of his forefathers from the time of Adam to his own time, when God called him

to be the deliverer of the Israelites. From the human viewpoint, as shown by the facts and circumstances, Moses was amply qualified to write the history of mankind from the beginning until his own day. Intelligent men have a natural tendency to keep a record of facts and events, and it is but reasonable that Moses had a fund of information duly set down to be passed on to other generations. So much from the human viewpoint.

None of the testimony mentioned here will be accepted by evolutionists or higher critics who have no faith in God. "The fool hath said in his heart, There is no God." (Psalm 14:1) A person does not need to say in words, "There is no God"; but by his own conduct or course of action he discloses his secret thoughts. All visible creation testifies to the indisputable fact that there is a Supreme One who is the Creator, the Almighty God.

The miraculous birth of Jesus, his teachings, his crucifixion and his resurrection out of death are supported by a multitude of witnesses, all of which establish the fact that Jesus was not an ordinary man, but the Son of Almighty God. A host of heavenly angels bore testimony at the time of the birth of the babe Jesus that he is "Christ the Lord".—Luke 2: 9-14.

The circumstantial evidence of the miraculous birth of Jesus, and the direct testimony delivered by the man Christ Jesus during the three and more years of his ministry, establishes the authenticity of the Holy Scriptures, or Bible, as the Word of Almighty God. After his resurrection by the power of Almighty God, Christ Jesus appeared to his faithful disciples, at which time he confirmed the words which he had spoken to them before his death. At the same time he testified as to the authen-

ticity of what is written in the law and in the prophecies and in the songs which we call "Psalms". It was then he said: "These are the words which I spake unto you, while I was yet with you, that all things must be fulfilled, which were written in the law of Moses, and in the prophets, and in the psalms, concerning me."—Luke 24: 44.

After his ascension into heaven the Lord gave to John, his faithful servant, a revelation of the things that must come to pass: "The Revelation of Jesus Christ, which God gave unto him, to shew unto his servants things which must shortly come to pass; and he sent and signified it by his angel unto his servant John."—Revelation 1: 1.

Jesus Christ is "The Faithful and True Witness". (Revelation 1: 5; 3: 14) The testimony of Christ Jesus, therefore, imports absolute verity. Jehovah, the Almighty God, sent his Beloved, Jesus, to the earth to tell the truth, and he told the truth. When standing before the Roman governor, charged with treason, Jesus testified, to wit: "To this end was I born, and for this cause came I into the world, that I should bear witness unto the truth. Everyone that is of the truth heareth my voice."—John 18: 37.

The testimony of Jesus when he was a man on earth is further proof that the Pentateuch, or the first five books of the Bible, were written by Moses at the dictation of Almighty God. (Malachi 4: 4; Matthew 8: 4; Mark 1: 44; 7: 10; 12: 26; Luke 5: 14; John 3: 14; 7: 19, 22, 23) After his resurrection out of death, and when Jesus appeared unto his faithful disciples, his testimony to them fully confirmed what he had told them when he was with his disciples: "And beginning at Moses, and all the prophets, he expounded unto them in all the scrip-

tures the things concerning himself."—Luke 24:27.

Not only was Moses the servant of Jehovah and used by Jehovah to write the five books first appearing in the Bible, but he was a prophet of Almighty God and foreshadowed Christ Jesus, the great Prophet. The testimony of Jesus confirms this statement when we note that he said: "Moses . . . wrote of me." The religious leaders amongst the Jews were opposed to Jesus and, addressing them, he said: "Do not think that I will accuse you to the Father; there is one that accuseth you, even Moses, in whom ye trust. For had ye believed Moses, ye would have believed me: for he wrote of me."—John 5:45, 46.

Not only did he say that Moses had written a portion of the Bible and had written of Christ Jesus, but furthermore he testified: "Search the scriptures; for in them ye think ye have eternal life; and they are they which testify of me."—John 5:39.

Moses was a type of Christ Jesus, the great Prophet; which the evidence completely establishes. Addressing his words to the Israelites, the covenant people of God, Moses uttered this prophecy: "The Lord thy God will raise up unto thee a Prophet from the midst of thee, of thy brethren, like unto me; unto him ye shall hearken." (Deuteronomy 18:15) That prophecy is fulfilled in Christ Jesus: "For Moses truly said unto the fathers, A Prophet shall the Lord your God raise up unto you of your brethren, like unto me; him shall ye hear in all things, whatsoever he shall say unto you. And it shall come to pass, that every soul, which will not hear that prophet, shall be destroyed from among the people."—Acts 3:22, 23.

Christ Jesus is that great Prophet, who speaks

with full authority conferred upon him by his Father, the Almighty God, Jehovah. Repeatedly the testimony given by Jesus shows that his Father, the Almighty God, sent Jesus to the earth and that the testimony of Jesus is in exact accord with the will of his Father. (John 6: 38, 39) To his learned critics Jesus said: "My doctrine is not mine, but his that sent me." (John 7: 16) Jesus always testified to the truth as he was directed by Jehovah.—John 8: 28, 29, 42.

The holy spirit, which is the invisible power of almighty God, moved upon faithful men of old to write what is set forth in the prophecies and which is there written according to the will of Almighty God. This is a guarantee that the prophecies are true. The testimony of Jesus confirms the authenticity of the prophecies. Both the acts and the words of Jesus refer specifically to the prophets; which proves that the prophecies written in times of old, as set out in the Bible, are true. Note some of the things which Jesus did in confirming the words of the prophets recorded in ancient times. (Matthew 4: 13-16) Early in his earthly ministry he read from the prophecy of Isaiah 61: 1, 2, to wit: "The spirit of the Lord God is upon me; because the Lord hath anointed me to preach good tidings unto the meek; he hath sent me to bind up the brokenhearted, to proclaim liberty to the captives, and the opening of the prison to them that are bound; to proclaim the acceptable year of the Lord, and the day of vengeance of our God; to comfort all that mourn. (Isaiah 61: 1, 2) "The spirit of the Lord is upon me to preach the gospel to the poor; he hath sent me to heal the brokenhearted, to preach deliverance to the captives, and recovering of sight to the blind, to set at liberty them that are

bruised, to preach the acceptable year of the Lord." "And he began to say unto them, This day is this scripture fulfilled in your ears." (Luke 4: 18, 19, 21) Thus he proved the authenticity of Isaiah's prophecy.

Jesus in fulfillment of a certain portion of Isaiah's prophecy healed the sick: "That it might be fulfilled which was spoken by Esaias the prophet, saying, Himself took our infirmities, and bare our sicknesses." (Matthew 8: 17) Thus he directly applies this prophecy to himself. He repeated the words of the prophet Malachi and applied the same to himself: "For this is he of whom it is written, Behold, I send my messenger before thy face, which shall prepare thy way before thee." (Malachi 3: 1; Matthew 11: 10) He repeated the prophecy written at Isaiah 42: 1-3 and applied the same to himself. (Matthew 12: 17-21) From the prophecy of Jonah Jesus quoted, fully testifying to the authenticity of that prophecy. (Matthew 12: 39-41) He referred to the prophecy concerning Solomon and the queen of the south and then said: "Behold, a greater than Solomon is here." (Matthew 12: 42) Jesus spoke in parables, "that it might be fulfilled which was spoken by the prophet." At Psalm 78: 2: "I will open my mouth in a parable; I will utter dark sayings of old."—Matthew 13: 31-39.

At Matthew 21: 4, 5 Jesus quoted with approval other prophecies: Zechariah 9: 9 and Isaiah 62: 11. Jesus cited with approval the prophecy of Daniel 9: 27 and Daniel 11: 31. (See Matthew 24: 15.) At the same time he spoke of the conditions in the earth that prevailed in the day of Noah, and told his hearers that a similar state of affairs would again obtain upon earth in "the last days", thus proving the authenticity of the prophecy of Noah

and prophesying of "the time of the end". (Matthew 24:37-39; see also Matthew 27:9-35) Jesus testified as to the authenticity of the law and of all the holy prophets (Matthew 11:13), and stated that upon these the two great commandments of God are based. (Matthew 22:36-40) Having testified to the authenticity of the law and of the prophets, which are set forth in the Holy Scriptures, and having stated that he received these truths from the Almighty God, his Father, Jesus summed up the matter in these authoritative words: "Thy word is truth."—John 17:17.

For more than three years the twelve apostles of Jesus were personally taught by him. God gave him those apostles, and all but one of them remained faithful. (John 17:6-10) The testimony is abundant that at Pentecost the faithful apostles received the outpouring of the holy spirit of God in fulfillment of the prophecy uttered by Joel. (Joel 2:28; Acts 2:1-21) Inspired and moved by the holy spirit of God, Peter the apostle, then and there testified that the Lord God had raised Jesus out of death, and then added: "God hath made that same Jesus, whom ye have crucified, both Lord and Christ"; and at the same time cited the prophecy foretelling that great and marvelous act of God. (Acts 2:31-36) Later the apostle Peter wrote concerning the prophets: "Knowing this first, that no prophecy of the scriptures is of any private interpretation. For the prophecy came not in old time by the will of man; but holy men of God spake as they were moved by the holy spirit."—2 Peter 1:20, 21; see also 2 Samuel 23:2.

Paul the apostle, who was made a special ambassador of the Lord Jesus Christ and who was anointed and filled with the holy spirit, under inspiration

of the holy spirit testified concerning the authenticity of the Scriptures in these words: "All scripture is given by inspiration of God, and is profitable for doctrine, for reproof, for correction, for instruction in righteousness; that the man of God may be perfect, thoroughly furnished unto all good works."—2 Timothy 2: 16, 17.

Q You don't deny putting this book out, do you?

A No sir.

Q You put this book out?

A Yes sir.

Q Did you put this book—you didn't give this book, that accompanies this one, to the man? (Refers to another book)

A No sir.

BY MR. CLARK: I offer this, that goes with it, Children.

(Mr. Clark handed Mr. Culkin a small book or pamphlet)

BY MR. CLARK: We offer this in evidence as study questions on this children's book.

BY MR. LAWRENCE: To which we object.

BY THE COURT: If it throws any light on what is taught to children, I will let it go in evidence.

(The book in question was here marked by the court reporter as Exhibit A to the direct examination of the defendant, Clem Cummings. Exhibit A follows):

Q I want to ask you this question: I want you to turn to Page 314 in the book called Children. The reason I turn to that is because that is the basis on which the State has placed the most of their proof as to

disloyalty of the book. This question is asked here in the children's book, and I will ask it like it is here in this book: "How and why are children in a covenant with God persecuted, and why do both they and their parents remain fearless and joyful under such trials?" The Scripture cited there is Ephesians 6:12. There are three Scriptures to read.

BY MR. LAWRENCE: What book is that he has got in his hand?

BY MR. CLARK: That is a Bible.

BY MR. LAWRENCE: That is all right. I oppose that junk.

Q Read it.

A (Reading Ephesians 6:12) "For we wrestle not against flesh and blood, but against principalities, against powers, against the rulers of the darkness of this world, against spiritual wickedness in high places."

Q Read 1 Peter, 3:12-14.

A "For the eyes of the Lord are over the righteous, and his ears are open unto their prayers; but the face of the Lord is against them that do evil. And who is he that will harm you, if ye be followers of that which is good. But and if ye suffer for righteousness' sake, happy are ye; and be not afraid of their terror, neither be troubled."

Q Read 1st John, 4:17-18 verses.

A "Herein is our love made perfect, that we may have boldness in the day of judgment: because as he is, so are we in this world. There is no fear in love; but perfect love casteth out fear; because fear hath torment. He that feareth is not made perfect in love."

Q Read 1st John, 5th chapter, 21.

A "Little children, keep yourselves from idols. Amen."

BY MR. LAWRENCE: Read that again.

BY THE WITNESS: "Little children, keep yourselves from idols. Amen."

Q (By Mr. Clark, resuming) Now then, read under 314 this question pertaining to that.

A (Reading from Exhibit A to testimony of Tom Byrd) "Satan knows that his time is short, and therefore he is desperately trying to turn all persons, including the children, against God. (Revelations 12: 12-17)"

Q Read Revelation 12: 17.

A "Therefore rejoice ye heavens, and ye that dwell in them. Woe to the inhabitants of the earth and of the sea! for the devil is come down unto you, having great wrath, because he knoweth that he hath but a short time. And when the dragon saw that he was cast upon the earth, he persecuted the woman which brought forth the man child. And to the woman were given two wings of a great eagle, that she might fly into the wilderness, into her place, where she is nourished for a time, and times, and half a time, from the face of the serpent. And the serpent cast out of his mouth water as a flood after the woman, that he might cause her to be carried away of the flood. And the earth helped the woman, and the earth opened her mouth, and swallowed up the flood which the dragon cast out of his mouth. And the dragon was wroth with the woman, and went to make war with the remnant of her seed, which kept the commandments of God, and have the testimony of Jesus Christ."

Q I want to deal with one other page now. We will take Page 320 in the book there. You may read it first.

A (Reading from Page 320 of Exhibit A to testimony of Tom Byrd) "Jehovah's name is above all things and of supreme importance. His name stands for everything that is good, pure, righteous and holy. His name stands for his purpose toward all creation. His name means that he is the Maker of heaven and earth and the Giver of Life to all that shall ever have life. Centuries ago Satan challenged the name of the Most High, and from then till now Satan has brought great reproach upon the name of Almighty God. Under the influence of that wicked one the masses of human creation have defamed Jehovah's holy name. The Almighty God is long-suffering and permits the wicked to pursue their course of wickedness until his own due time to exalt and vindicate his name. The day of complete vindication of Jehovah's holy name is nigh. During the period of time from the rebellion to the time of vindication Jehovah has shown his favor to those who obey him, and this he has done primarily for his own name's sake."

BY MR. LAWRENCE: You read that out of your book?

BY THE WITNESS: It is out of the Bible.

BY MR. LAWRENCE: It is out of this book.

BY THE COURT: This gentleman here has the witness on direct examination.

BY MR. LAWRENCE: I beg your pardon.

BY MR. CLARK: I will bring that out from the Bible.

Q Read why Jehovah's name is of supreme impor-

tance, and how has it been reproached, and why have obedient men been saved. Jeremiah 10: 6.

A "Forasmuch as there is none like unto thee, O Lord: thou art great, and thy name is great in might."

Q Psalms 79: 1-4.

A "O God, the heathen are come into thine inheritance; thy holy temple have they defiled; they have laid Jerusalem on heaps. The dead bodies of thy servants have they given to be meat unto the fowls of the heaven, the flesh of thy saints unto the beasts of the earth. Their blood have they shed like water round about Jerusalem; and there was none to bury them. We are become a reproach to our neighbors, a scorn and derision to them that are round about us."

Q Read the 12th verse of that same chapter.

A "And render unto our neighbors sevenfold into their bosom their reproach, wherewith they have reproached thee, O Lord."

Q Read Psalms 74: 18.

A "Remember this, that the enemy hath reproached, O Lord, and that the foolish people have blasphemed thy name."

Q And the 22nd verse in that same chapter.

A "Arise, O God, plead thine own cause: remember how the foolish man reproacheth thee daily."

Q And the 23rd verse of that same chapter.

A "Forget not the voice of thine enemies: the tumult of those that rise up against thee increaseth continually."

Q Read the 23rd Psalm, one to three.

A "The Lord is my shepherd; I shall not want. He maketh me to lie down in green pastures: he leadeth me besides the still waters. He restoreth my soul: he leadeth me in the paths of righteousness

for his name's sake."

Q Read the 83rd Psalm, beginning with the last three verses.

A "Fill their faces with shame; that they may seek thy name, O Lord. Let them be confounded and troubled forever; yea, let them be put to shame, and perish. That men may know that thou, whose name alone is Jehovah, art the most high over all the earth."

Q Now, Mr. Cummings, in passing this book to Mr. Byrd, the jailer, did you pass or intend to pass a book that taught disloyalty or outspoken refusal to salute the flag?

A No sir.

Q You were undertaking to preach the gospel of the Kingdom?

A That, and nothing else.

Q Mr. Cummings, how long have you been in Vicksburg?

A Since the last of December, 1941.

Q What did you do prior to that time?

A I worked for a railroad for twenty three years.

Q What railroad?

A The Illinois Terminal Railroad Company.

Q At what place?

A I worked out of various terminals. The last place I made my home was Urbana, Illinois.

Q Have you always been one of Jehovah's Witnesses?

A No sir.

Q What church did you belong to other than that?

A None.

Q Have you ever belonged to any other church?

A No sir.

Q Have you ever refused to salute the American flag when you were requested to do so by law?

A I have. I have refused to salute the flag.

Q I said when required to do so by law.

A I had doubts in my mind as to the authority anyone had to request me to do so. In other words, when I was requested to salute the flag, I didn't think the person requesting me to do so had authority to do so.

Q Have you, when a member of the Army of the United States, or did you, when you were in the Army, salute the flag?

A I did.

BY MR. CULKIN: We object to what he did do or would do.

BY THE COURT: Sustained.

Q Do you teach people that it is wrong to salute the flag?

A No sir, at no time.

Q Have you ever taught anybody that it was wrong to salute the flag?

A No sir, I am not interested in that at all; it is not my business.

Q I note in this book you had awhile ago that it says that the devil has influenced certain people. It doesn't say what country or what nation or what people, but it says the devil has influenced certain officials to compel children to engage in idolatrous practices, such as saluting flags and hailing men. Did you know that was in there at the time you passed this book out?

A No sir, I probably read it—I read the book through—but there are many things in there, that I can't keep in my mind, that I took no particular note of it the time I distributed the book. There are many passages in there that I have read, but I made no effort to memorize them at all.

Q Mr. Cummings, at the time that you passed the book, did you intend to cause anybody to read anything that would cause them to become disloyal or disrespectful to, or to stubbornly refuse to salute the flag?

A No sir, it wasn't my intention at all.

Q Would you then say that it was wrong to salute the flag?

A No sir, I wouldn't say it was. It is perfectly right for people to salute the flag if they want to; it is absolutely right.

Q Is the wrong then like that book put it there, where it says the wrong is in compelling children to salute the flag, or bow down to some image or thing, or hailing men?

A In my mind, that is what it means. That is the way I see it. I came to that conclusion some time ago; I don't mind telling why. Along about 1933, Mr. Adolph Hitler came to power and commanded men to hail him—

BY MR. LAWRENCE (Interposing): We object to all that mess, trying to dodge the issue.

BY THE COURT: Sustained, as to why he arrived at the conclusion.

Q Would you say the act, or friendly gesture of saluting the flag—do you think that is any harm?

A I do not.

Q Do you think there is any harm in the flag?

A No sir, not at all.

Q Tell the jury how you feel towards the flag and towards the country.

A When you make a consecration to the Lord, and obey the Lord and be obedient to His commands—Exodus 20:3, 5 says: "Thou shalt have no other gods before me. Thou shalt not make unto thee any

graven image, or any likeness of anything that is in heaven above, or that is in the earth beneath, or that is in the water under the earth. Thou shalt not bow thyself down to them or serve them." To me, that is that. It would be a violation of my conscience to bow down or salute anything, therefore, to be obedient to the commandments as I see them I do not, myself, engage in that practice. I think it is an individual matter with everyone.

Q Would you advise anybody not to salute the flag?

A No sir, I would not.

Q Have you advised anybody or taught anybody not to salute the flag?

A No sir.

Q You heard some of the witnesses testify here this morning; some of the officers—I may have misunderstood them. Did you at that trial tell them that you taught people not to salute the flag?

A They evidently didn't understand me; that is not my business. My business is preaching the gospel of the kingdom. They evidently misunderstood what I said.

Q Why did the flag issue come up there? This is war time; we should not bring up the flag question now, should we?

A They brought it up; I didn't. I won't talk to anybody about it unless they bring it up. I answer questions from the standpoint of being courteous and polite.

Q Since we are engaged in war, and since this is the book in issue, will you tell the Court and jury when that book was written, and by whom, and if it was written before the war or after the war?

A It was written by J. F. Rutherford, in the United States, and copywrited in 1941 in Brooklyn, New York, U. S. A., and published by the Watchtower

Bible and Tract Society, Inc., written and published prior to the entry of the United States into the war.

Q Is that the only page in that book that you remember—you have been studying it since you were indicted?

A Yes sir.

Q Since you have gone over it do you find any other place about a flag being mentioned, directly or indirectly?

A I find no other citation in the book, I looked for it three days and could find it nowhere else.

Q Did you, when you were placing that book, did you consider yourself preaching the gospel of the Lord when you were giving it out to people?

A Yes sir.

Q Have you got any authority to go from house to house?

2 A I am an ordained minister of the gospel, ordained by the Watchtower Bible and Tract Society, which has a ministerial department, to engage solely in this work. My ordination is from the Scriptures. Isaiah 61: 1 and 2. "The Spirit of the Lord God is upon me; because the Lord hath anointed me to preach good tidings unto the meek; he hath sent me to bind up the broken-hearted, to proclaim liberty to the captives, and the opening of the prison to them that are bound. To proclaim the acceptable year of the Lord, and the day of vengeance of our God; to comfort all that mourn."

Q Did Jesus quote that same Scripture?

A He did. It is part of the ordination of those who are ordained by Almighty God.

Q Did He leave off that part, to "proclaim the day of vengeance?"

A I believe He did; I wouldn't say positively.

Q Have you got—I forgot if you told me or not—have you got an ordination of the Department of Evangelism of the Watchtower Bible and Tract Society?

A I have a certificate of ordination.

Q Where is your ordination?

A Their letter of ordination has not been sent to me.

(The defendant here read a yellow card to the jury, which was then introduced in evidence as Exhibit B to the testimony of Clem Cummings. Exhibit B follows):

**“EXHIBIT B TO TESTIMONY OF
CLEM CUMMINGS”**

(Certificate of Clem Cummings, as an ordained minister of Jehovah)

Q Mr. Cummings, did this book which you distributed, that you gave to the jailer, did you get that through the United States mail?

A I can't say. I got some of it through the United States mail and some of it by railroad freight.

Q But these books do come through the United States mail?

A Some of them do, depending on the size of the shipment.

Q Does the United States Government recognize Jehovah's Witnesses, and being an ordained minister?

BY MR. LAWRENCE: We object to that.

BY THE COURT: Sustained.

Q You are an ordained minister of the gospel, first, by Jehovah God, through His word, the Bible, and

also by the laws of this country through the Watchtower Bible and Tract Society, Inc.?

A That is right.

Q You are ordained as a minister by the laws of the land and by the Great Creator?

A By both.

Q And when you practiced your religion or your worship, when you passed this book out on the street, not so much in jail because you were just discussing the matter with the jailer; but you don't deny you passed these books out on the street, do you?

A I do not.

Q Were you or not engaged in political activity?

A I was not.

Q Does a Jehovah's Witness engage in political activity?

BY MR. LAWRENCE: We object to that.

BY THE COURT: Over-ruled.

Q Do you—I won't ask about others—but do you, as one of Jehovah's Witnesses, do you engage in politics in any manner?

A I do not.

Q Are you seeking in any way to influence the governments of the world?

A Not at all.

Q Tell whether or not these books are treated as subversive by the Government of the United States?

A They are not.

BY MR. CULKIN: We object to that.

BY THE COURT: Sustained.

Q Have you ever been in the United States Army?

A I volunteered during the First World War.

Q Do you have an honorable discharge?

A Yes sir.

BY MR. CLARK: That is all.

CROSS EXAMINATION

BY MR. CULKIN

Q Mr. Cummings, you say you don't engage in anything along the lines of political life in this country? Or any other?

A I don't engage in politics of any kind.

Q You distribute the Watchtower, do you?

A Yes sir.

BY MR. CLARK: We object.

BY THE COURT: Over-ruled.

Q Tell the Court and jury what is meant by what I am reading to you on Page 375, Paragraph 2: "Religion is a snare and a racket." "The message set out in the books Enemies and Religion contained warnings to the religious, political and commercial combine that now rule the earth contrary to God's will."?

A I believe it is like it states there.

Q Do you believe religion is a snare and a racket?

A I do.

Q In this Watchtower which you are distributing, the American Legion is mentioned in one of these Watchtowers. You are familiar with what it says, are you?

A I don't know that I am or not.

Q Do you recall that it says that the hierarchy and other gunmen are doing so and so? Do you?

A I don't recall.

Q You don't deny it, do you?

A I have never read it.

Q You mentioned Judge Rutherford, did you?

A The author of that book.

Q Did you know that, during the First World War, he was interned on account of his refusal to pay tribute to the American flag and on account of his activities, that were contrary to what the American people stood for?

BY MR. CLARK: We object to that.

BY THE COURT: Sustained.

Q Are you familiar with the fact that Judge Rutherford, on account of the fact that he engaged in such utterances that were calculated to bring about religious and unpatriotic conditions in the country, that he was stopped in the middle of a radio address?

BY MR. CLARK: We object.

BY THE COURT: Sustained.

Q You told the jury that you didn't know what was in that book?

A I said there were no doubt passages there that I couldn't say were in there or not.

Q You didn't know about a statement in this book about saluting the flag being idolatrous?

A I probably read it. I don't keep all of those things in my mind.

Q Tell the Court and jury why, if you didn't know it was in there, as soon as Mr. Byrd asked you about it you turned to page 314 of that book and showed him this particular passage, and showed him where it was idolatrous to salute the flag, based

on what you found in Exodus 20:1-5? Tell the jury, if you didn't know that wasn't in the book, why you went to the passage and quoted Exodus 20:1-5?

A I didn't read out of the book; I read out of the Bible. We didn't read out of the book.

Q You didn't turn to Page 314, where you pointed out that particular place to him?

A Our conversation in the jail was very brief. He asked if I had a Scripture as to why I thought it was wrong to salute the flag, and I showed it to him in his Bible, at Exodus 20:1-5, and he read it.

Q When you had read it to him you told him you did not believe in saluting the flag, and that you would not salute one, and you said Exodus 20:1-5 was your authority for that?

A The authority that applied to me.

Q And you sustained your point of view based on that particular point?

A That is one of them.

Q Tell the jury what the Savior of mankind, the lowly Nazarene meant when people came to Him and showed Him a coin, and He said, "Whose inscription is thereon?", and the people said, "Caesar's," and the Lord said, "Render unto Caesar the things that are Caesar's, and to God the things that are God's." Explain to the Court and jury what the Savior of mankind meant when He said, "Render to Caesar the things that are Caesar's, and to God the things that are God's"? Tell the jury what that means?

A It seems to me it is self explanatory. The Savior testified that His kingdom was not of this world, and to obey all of those laws as long as they did not conflict with God's commandments, therefore it was all right for them to pay their taxes, etc. That

is what we practice.

Q He said to obey all the laws, did He not?

A Not in conflict with God's laws.

Q Real that in the Bible—

A (Interposing) That is the basis of all Scripture.

Q Look in the Bible; you are familiar with it. Find a passage in the Bible—

BY MR. CLARK (Interposing): We object to that.

BY THE COURT: Sustained.

Q In your quotation a moment ago you read from John 5:21, to keep your children from idols. Do you regard the American flag as an idol?

A When a man is compelled to bow down and worship it, it becomes an idol, in my mind.

Q Saluting the flag, would that come under what you mean by being idolatrous?

A Not necessarily.

Q Your book says it is idolatrous, does it?

A That particular Scripture may not apply exactly that way. I am not saying.

Q You would not know if the Scriptures applied that way or not. When was the organization, of which you say you are an ordained minister—when was it organized, and by whom?

A Somewhere about 1874, along in there.

Q When did it become actively engaged in the work it is doing now by way of these books and pamphlets?

A That is before my time, but it was after 1874, after the time of its organization. You have reference to the Watchtower Bible and Tract Society?

Q Yes. You have evidence there that says Clem Cummings is vested with certain authority?

A Yes.

Q Do you know a colored woman named Tennessee Jamison, sitting up there (Indicating balcony) ?

A Yes sir.

Q She has one of those things too, has she (Indicating Exhibit B to testimony of Clem Cummings) ?

A I don't know.

Q Do you know Ulysses Hamilton, who lives on the river ? Do you know him ?

A Yes sir.

Q Is he an ordained minister too ?

A I can't say.

Q Look at that card and see (Hands witness card).

A His name is on there.

Q Every human being who distributes these books go around, and every one of them has a card like this ?

A I don't know.

Q Every one of them who distributes these books—

BY MR. CLARK (Interposing) We object.

BY THE COURT: Sustained.

Q As a matter of fact, under your teaching in these books, The Watchtower, God, and The Government, it is not necessary to be ordained as a minister at all; you are called by Jehovah and start out to preach ?

A That is from the Scripture.

Q And you teach that all preachings and teachings of all other denominations are fallacious because they are not authorized by Jehovah ?

A No sir, I don't teach that.

Q Does your book teach that ?

A I don't know.

Q Tell the court and jury what you mean, if you know, about the reference to kings of the north and kings of the south, in this Watchtower.

BY MR. CLARK: We object to that.

BY THE COURT: Sustained.

- Q We mentioned the word "politics" a minute ago. What does this mean, where it says: "Will the present world conflict between the 'Axis powers' and the so-called 'Democracies', the opposers, end in a decisive victory for either side? The prophecy indicates the contrary result; and since we have no way of determining the future save by the prophecy of God, as set forth in the Bible—". What do you mean by that?
- A Armageddon will take place and neither one will have authority.
- Q Is that what you mean?

BY MR. CLARK: We object.

BY THE COURT: Sustained.

- Q In the City Hall you told the people it was not in keeping with propriety for them to salute the flag?
- A I don't teach that at all.
- Q You refused then and there to salute the flag and, according to what they said, you said, "I not only don't salute the flag but we teach others not to salute it." Did you say that?
- A No sir, they must have misunderstood it. We don't teach others not to salute it.
- Q You say that this particular belief was started about 1874?
- A I said the Watchtower Bible and Tract Society was organized about that time. The belief has been going on since the time of Adam and the Garden of Eden.
- Q These other influences and religions—your point of view is, that they are all wrong?

A No sir.

Q If this book says that certain authorities are compelling children to indulge in idolatrous practices, such as saluting of the flag, do you believe this book is wrong?

A That is an individual matter.

Q Is it an individual matter with you if the Watchtower says that people who expel children from school for failing to salute the flag, that they are anarchists and wild beasts? You recall the case when children in Pennsylvania were expelled, and if the Watchtower says that the law required them to salute the flag or go home—

BY MR. CLARK (Interposing): We object.

BY THE COURT: Sustained.

Q You believe that the Watchtower, in what it says here, and the books you distribute, that they are absolutely telling what people should do and by what they should abide?

A We each one read it, and study these publications, and if they are in harmony with the Scriptures, that is what we believe. As they are written by men, they are not infallible and may have error in them.

Q Do you believe it is in harmony with Scripture that it is idolatry to salute the flag?

A To me that is an individual matter. I don't tell what others should do.

Q When you come into the office of anyone, or into the home of anyone, and begin playing the graphophone record, and begin passing out your information that it is idolatrous to salute the flag or show it respect, do you believe what you are teaching?

A I don't teach that.

Q Why do you have it on this graphophone record?

A So they can hear the message on the record and have the literature, and they can reach their own conclusion.

Q You give them literature and play the record, and leave it to their conclusion?

A They can accept or reject it.

Q You do take the graphophone record, and take the Watchtower and take Children, and deliver them, and you take God, and Government, and deliver it, or God and State, and if they contain that you just let them read it, which says that it is wrong to salute the flag, and if they don't want to obey it you let them arrive at their own conclusions?

A At their own conclusions.

Q If these books say it is idolatrous and heathenish to require children to salute flags, and children are robbed of their rights when children are required to salute flags, and you know those things are in these books, and you deliver them—is that right?—and let them draw their own conclusions?

A Yes sir.

Q In practically all of them it says that all of the people that have any religious teachings are simply misled—you call them racketeers—I won't say that, but they are mistaken—and the only ones who teach the proper belief are the Jonadabs, or Jehovah's Witnesses?

A No sir, we don't teach. We preach the kingdom, and leave the literature with them.

Q What is the difference between preach and teach?

A We don't teach. We try to tell people how to conduct themselves, and what is right and wrong. It is their obligation, what they believe.

Q You say you don't teach: what does this mean: "Thereat the religious hierarchy and allied clergy will cry out one to another and to their political

and commercial allies, and to the war-ruined people, 'Peace and safety.' Then Jehovah from his throne in the north, and Christ Jesus, his King from the east or sunrising, shall send them a preliminary rebuke," and it says: "He will pour out his indignation and fierce anger as a death-dealing rebuke to the God-forgetting nations, and all the visible earthly part of Satan's organization shall be devoured with the fire of his jealousy. The nations that adopted religion or demonism and made war upon God and his witnesses shall there at Armageddon forever disappear from existence." What does that mean?

BY MR. CLARK: We object to that.

BY THE COURT: Sustained. This man is charged here with distributing that blue book; he is not charged with distributing something else. Even if it does disclose that he distributes them, he can't be convicted for distributing something that he is not charged with in the indictment.

Q You mentioned your military activity. In truth and in fact, at the beginning of the World War you were listed as a conscientious objector, were you?

A No.

Q What does the record show?

A I don't know.

Q It is your record, is it?

A I reckon so. I volunteered in the Army. Did you?

Q Yes. Did you?

A Yes, I volunteered for service.

Q How long were you in the Army?

A Not very long. The fact remains, I did volunteer.

Q You were not married then, were you?

A No sir.

Q Did your attorney ask you when you took up this particular work, and I believe you said a few years ago; it don't make any difference though.

A 1928 or 30; along in there.

Q You are the one that delivered this particular book to Mr. Byrd?

A Yes sir.

Q And delivered it to other people in the City of Vicksburg and Warren County?

A Yes sir, I delivered quite a few of them.

Q In delivering this book, which says it is idolatrous to salute the flag, or any other book, you go out to people and let them study it and arrive at their own conclusions; is that right?

A Yes sir.

Q Did you or not state that you did not salute the flag and that you taught others not to salute it?

A I do no teach others not to salute it. Everyone has their individual rights.

Q Practically everybody has read to the jury this particular passage, and I will ask you to read that passage, down to "God", beginning right here.

A "Satan knows that his time is short, and therefore he is desperately trying to turn all persons, including the children, against God (Revelation 12:12, 17). Therefore Satan influences public officials and others to compel little children to indulge in idolatrous practices by bowing down to some image or thing, such as saluting flags and hailing men, and which is in direct violation of God's commandment. (Exodus 20: 1-5) That is why in the last few years rules are made and enforced in the public schools compelling children of the Jonadabs, who are in a covenant to do God's will, to indulge in the idolatrous practice of flag-saluting and hailing men. It is the influence of that subtle foe, the Devil, that

has brought about this state of affairs, and now Satan's agents cause great persecution to be brought upon the parents and children who insist on obeying the commandments of God."

Q According to that, those who pass the laws and require you to salute the flag, and even in the Army, if they salute the flag—people who do that, according to that, are agents of Satan. Is that so?

A I don't say so; I let the Lord do that; I don't judge them.

Q But you did distribute the book?

A Yes sir, I did.

BY MR. CULKIN: That is all.

REDIRECT EXAMINATION

BY MR. CLARK

Q In regard to Paragraph 2 on Page 314, this is what you read: "Therefore Satan influences public officials and others to compel little children to indulge in idolatrous practices by bowing down to some image or thing." Is it not—the important word there is "compel?"

A Yes sir.

Q Then is the practice of saluting the flag, and making a friendly gesture to Old Glory, is there any harm in that?

A Not at all.

Q The harm is compelling a man against his conscience, is it?

A Yes sir.

Q Is that or not the truth?

A Yes sir.

BY MR. CLARK: That is all.

(Witness excused)

BY MR. CLARK: Your Honor, will you excuse the jury?

(The jury here retired from the courtroom)

BY MR. CLARK: We rest.

BY MR. CULKIN: We rest.

(At the request of Mr. Clark the following motion was incorporated in the record, Mr. Clark asking the court reporter to copy it in its entirety)

MOTION FOR DIRECTED VERDICT

**IN THE CIRCUIT COURT OF
WARREN COUNTY, MISSISSIPPI
9 JUDICIAL DISTRICT**

No. 4280

STATE OF MISSISSIPPI vs. CLEM CUMMINGS,
Defendant(s)

Now come the defendants in the above entitled and numbered cause and file this their **MOTION FOR A DIRECTED VERDICT** at the close of the case and when all evidence is in, and as grounds therefor say:

ONE

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is void on its face and unconstitutional because Section 1 thereof deprives the citizens and residents of Mississippi, and particularly these defendants, of their rights of freedom to worship Almighty God according to the dictates of their conscience, freedom of press and freedom of speech, contrary to Sections 13, 14, 18 and 32 of the Constitution of the State of Mississippi, the First Amendment to the United States Constitution, and Section 1 of the Fourteenth Amendment to the United States Constitution.

TWO

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional as construed and applied to the activity of these defendants because Section 1 thereof deprives these defendants of their inherent rights of freedom to worship Almighty God according to the dictates of their conscience, freedom of press and freedom of speech, contrary to Sections 13, 14, 18 and 32 of the Constitution of the State of Mississippi, and the First Amendment and Section 1 of the Fourteenth Amendment to the United States Constitution.

THREE

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because Section 1 thereof is unreasonable and in excess of the police powers of the State of Mississippi, thereby permitting the denial of liberty without due process of law, contrary to Section 14 of Article 3 of the Mississippi Constitution and Section 1 of the Fourteenth Amendment to the United States Constitution.

FOUR

The statute under which the indictment is drawn known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because Section 1 thereof is vague, too general, indefinite and permits speculation on the part of the jury and court trying the cause, thus constituting a dragnet, both on its face and as construed and applied, all contrary to Section 14 of Article 3 of the Mississippi Constitution and Section 1 of the Fourteenth Amendment to the United States Constitution.

FIVE

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because Section 2 thereof is unreasonable and in excess of the police power of the state, and is vague, indefinite and a dragnet, in violation of Section 1 of the Fourteenth Amendment to the United States Constitution.

SIX

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because the entire statute denies equal protection of the laws and discriminates between classes contrary to Section 1 of the Fourteenth Amendment to the United States Constitution.

SEVEN

The indictment fails to allege any facts or circumstances showing the commission of any public offense or the violation of any law of the State of Mississippi.

EIGHT

The State has wholly failed to offer any evidence whatsoever as to the defendants' guilt, and the undis-

putable evidence shows that the defendants are not guilty of violating any law of the state of Mississippi, and are not guilty of the act charged in the indictment.

WHEREFORE defendants pray that upon consideration hereof the Court exclude all the evidence, grant this motion and instruct the jury to acquit the defendants and by their verdict say, "We the jury find the defendants not guilty", and render a judgment dismissing the indictment and discharging the defendants with their costs, and defendants pray for such other and further relief as they may show themselves justly entitled to.

[Signed] G. C. Clark
 Grover C. Powell
 Hayden C. Covington
Attorneys for Defendants

BY THE COURT: I over-rule the motion.
 Bring the jury in.

(The jury here returned to the courtroom)

Official Court Reporter's Certificate

I, T. B. Wright, official court reporter of the 9th Judicial District of Mississippi, do hereby certify that the foregoing pages contain a true, full and correct transcript of my shorthand notes of the proceedings had in the case of the State of Mississippi vs. Clem Cummings, tried at the July term, 1942 of the Circuit Court of Warren County, Mississippi.

I hereby further certify that I have this day filed with the Circuit Clerk in and for said county the original and one carbon copy of this record, and that I have

this day notified, according to law, Messrs. T. J. Lawrence, District Attorney, J. J. O'Neill, County Attorney, and J. H. Culkin, all of Vicksburg, Mississippi, representing the State in the trial of the case, and G. C. Clark, Waynesboro, Mississippi, representing the defendant, that I have this day filed this record.

T. B. Wright
Official Court Reporter

This the 2nd day of September, 1942.
Court reporter's fee: \$21.75

Pauper's Oath

And afterwards, to-wit: On the 20th day of July, A.D. 1942, the same being a day of the regular July Term 1942, the defendant filed his Appeal on Affidavit of Inability to give Cost Bond or Deposit amount of Costs from Circuit Court in Criminal Cases, which said Appeal on Affidavit is in the words and figures as follows, to-wit:

APPEAL ON AFFIDAVIT OF INABILITY TO GIVE COST BOND OR DEPOSIT AMOUNT OF COSTS FROM CIRCUIT COURT IN CRIMINAL CASES

No. 4280

The State of Mississippi vs. Clem Cummings

In the Circuit Court of Warren County, Mississippi.
I, Clem Cummings, do solemnly swear that I am unable to give a cost bond or to deposit a sufficient amount to cover all costs, and feeling aggrieved by the judgment

and conviction of—violating House Bill 689 of the 1942 Legislative Session—and sentenced to serve in the State Penitentiary for the duration of the war, but not to exceed ten years, as rendered against me in the Circuit Court of Warren County at the July Term, 1942, on the 22nd day of July 1942, I desire an appeal to the Supreme Court with Stay of Judgment.

(Signed) Clem Cummings

Sworn to and subscribed before me this the 23 day of July, 1942.

W. J. Foley
Circuit Clerk.

ENDORSED:

FILED: July 20, 1942.

W. J. FOLEY, CLERK.

Certificate of Clerk

STATE OF MISSISSIPPI,
COUNTY OF WARREN..

I, W. J. FOLEY, Clerk of the Circuit Court of aforesaid County and State, do hereby certify that the foregoing pages and lines contain a true and correct copy of the papers and proceedings and judgment in Case No. 4280, "STATE OF MISSISSIPPI Versus: CLEM CUMMINGS," as the same appears of record and on file in my said office.

WITNESS my hand and official seal of said Court at office in Vicksburg, this the 4th day of September A.D. 1942.

W. J. FOLEY, CLERK

(SEAL)

BY: M. F. McLannin D.C.

COST BILL

Taking and filing pauper's oath	1.10
Certificate	1.00
Expressage50
Stenographer's Transcript	21.75
Binding Records	2.00
Clerk's Transcript 7100 Words 15c per 100 ..	10.65
(Sec. 1788 Chapter 31, Code 1930)	
Total record cost	<u>\$37.00</u>

I hereby certify the above bill to be correct:

W. J. FOLEY, CLERK

OUR FEES PAID.

By: M. F. McLannin, D.C.

Docket Entries

**GENERAL DOCKET C-C,
SUPREME COURT OF MISSISSIPPI**

Case No. 35,155

Circuit Court, Warren County

Clem Cummings vs. State

Cert. filed 7/30/42

Record filed 10/27/42

Assignment Errors: G. C. Clark, G. C. Powell,
Hayden Covington 8/7/42

Carbon Copy Assignment Errors: G. C. Clark,
G. C. Powell, Hayden Covington 8/7/42

12 Exhibits: (2 "Children"—"Consolation"; 4 is-
sues "Watchtower" "Liberty to Preach" "Choosing"
"Government" 1 "Order Blank")—Filed 10/27/42

6 Copies Brief for Appellant: G. C. Clark, Grover C. Powell, Hayden C. Covington 11/16/42

Brief of Appellee: Geo. H. Ethridge 11/19/42

3 Carbons Brief of Appellee: Geo. H. Ethridge 11/19/42

Stipulation as to question for Court to consider: Geo. H. Ethridge, H. C. Covington 11/21/42

Submitted 11/23/42 BH 63B

54 Exhibits: 6 Copies "Children", 6 Copies "Children Study Questions", 6 copies "Choosing", 6 copies "Government", 6 copies "Consolation", 6 copies of 4 issues "Watchtower"—12/4/42

Affirmed 1/25/43 BH 89 In Banc

Petition for Stay, pending appeal to U. S. Court—H. C. Covington, G. C. Clark 2/1/43

Carbon Petition for Stay, pending appeal to U. S. Court—H. C. Covington, G. C. Clark 2/1/43

Bond for Appeal to U. S. Court 2/2/43

Order Staying Judgment 2/2/43

Assignment of Errors

MISSISSIPPI SUPREME COURT

No. 35155

STATE OF MISSISSIPPI

v.

CLEM CUMMINGS, *Appellant*

Now comes appellant and assigns the following as error in the lower court, to wit:

ONE

The court erred in refusing and overruling appellant's motion to quash the indictment duly and timely

filed with the clerk and presented to the court in the manner required by law. Each ground of said motion is made a part of this assignment of error. Said motion appears in the typewritten record and is incorporated herein and made a part hereof as though written at length herein.

T W O

The court erred in refusing and overruling appellant's demurrer to the indictment duly and timely filed with the clerk and presented to the court in the manner required by law. Each ground of said demurrer is made a part of this assignment of errors. Said demurrer appears in the typewritten record and is incorporated herein and made a part hereof as though written at length herein.

T H R E E

The court erred in refusing and overruling appellant's motion for peremptory instruction requesting the trial court to exclude the evidence of the State and instruct the jury to return a verdict for appellant, which motion was duly and timely filed with the clerk at the close of State's evidence and presented to the court in the manner required by law. Each ground of said motion for peremptory instruction is made a part of this assignment of errors. Said motion appears in the typewritten record and is incorporated herein and made a part hereof as though written at length herein.

The court erred in refusing and overruling appellant's motion for a directed verdict requesting the trial court to exclude all the evidence and instruct the jury to return a verdict for appellant, which motion was duly and timely filed with the clerk at the close of all the evidence and presented to the court in the manner

required by law. The motion for directed verdict reads, omitting formal parts, as follows:

Now comes the above named defendant, Clem Cummings, in the above entitled and numbered cause and files this his **MOTION FOR DIRECTED VERDICT**, and as grounds therefor says:

ONE

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is void on its face and unconstitutional because Section 1 thereof deprives the citizens and residents of Mississippi, and particularly this defendant, of their rights of freedom to worship Almighty God according to the dictates of conscience, freedom of press and freedom of speech, contrary to Sections 13, 14, 18 and 32 of the Constitution of the State of Mississippi, the First Amendment of the United States Constitution, and Section 1 of the Fourteenth Amendment to the United States Constitution.

TWO

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional as construed and applied to the activity of this defendant because Section 1 thereof deprives this defendant of his inherent rights of freedom to worship Almighty God according to the dictates of conscience, freedom of press and freedom of speech, contrary to Sections 13, 14, 18 and 32 of the Constitution of the State of Mississippi, and the First Amendment and Section 1 of the Four-

teenth Amendment to the United States Constitution.

THREE

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because Section 1 thereof is unreasonable and in excess of the police powers of the State of Mississippi, thereby permitting the denial of liberty without due process of law, contrary to Section 14 of Article 3 of the Mississippi Constitution and Section 1 of the Fourteenth Amendment to the United States Constitution.

FOUR

The statute under which the indictment is drawn, known as House Bill 689, of the Regular Legislative Session 1942, is unconstitutional because Section 1 thereof is vague, too general, indefinite, and permits speculation on the part of the jury and court trying the cause, thus constituting a dragnet, both on its face and as construed and applied, all contrary to Section 14 of Article 3 of the Mississippi Constitution and Section 1 of the Fourteenth Amendment to the United States Constitution.

FIVE

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because Section 2 thereof is unreasonable and in excess of the police power of the state, and is vague, indefinite and a dragnet, in violation of Section 1 of the Fourteenth Amendment to the United States Constitution.

SIX

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because the entire statute denies equal protection of the laws and discriminates between classes contrary to Section 1 of the Fourteenth Amendment to the United States Constitution.

SEVEN

The indictment fails to allege any facts or circumstances showing the commission of any public offense or the violation of any law of the State of Mississippi.

EIGHT

The State has wholly failed to offer any evidence whatsoever as to the defendant's guilt, and the undisputed evidence shows that the defendant is not guilty of violating any law of the State of Mississippi, and is not guilty of the act charged in the indictment.

WHEREFORE defendant prays that upon consideration hereof the Court instruct the jury to acquit the defendant and by their verdict say, "We the jury find the defendant not guilty," and render a judgment dismissing the indictment and discharging the defendant with his costs, and defendant prays for such other and further relief as he may show himself justly entitled to.

FIVE

The verdict of the jury is contrary to law.

SIX

The verdict of the jury is not supported by any evidence.

S E V E N

The judgment of the court is contrary to the law and the evidence.

E I G H T

The undisputed evidence shows that appellant is not guilty.

N I N E

The statute in question is unconstitutional on its face because, by its terms, it denies and deprives persons in Mississippi of their rights of freedom of press and freedom of speech, contrary to Sections 13, 14, 18 and 32 of the Constitution of the State of Mississippi and Amendments 1 and 14 to the United States Constitution.

T E N

The statute in question as construed and applied to the facts and circumstances is unconstitutional and denies appellant his rights of freedom of conscience, of press, of speech and of worship of Almighty God, contrary to Sections 13, 14, 18 and 32 of the Constitution of the State of Mississippi and Amendments 1 and 14 to the United States Constitution.

E L E V E N

The statute in question, both on its face and as construed and applied, violates the *due process* and the *equal protection* clauses of the Fourteenth Amendment to the United States Constitution, and is contrary to Section 14 of Article 3 of the Mississippi Constitution, because it is vague, indefinite, uncertain, too general, does not furnish a sufficiently ascertainable standard of guilt, enables the court and jury trying the indictment to speculate, permits arbitrary and discriminatory action and amounts to a dragnet, thus depriving

appellant of his liberty without equal protection and due process of law.

T W E L V E

The statute in question is in excess of the police power of the State because it unlawfully invades the realm of legislation impliedly delegated to the Federal Government. The statute is superseded by federal legislation pertaining to the United States flag, the present national emergency and the war now being waged between the Axis powers and the United States Government, and therefore duplicates federal legislation and encroaches upon federal powers, and thus deprives appellant of his rights in violation of the United States Constitution.

T H I R T E E N

The State wholly failed to offer any evidence to show guilt on the part of appellant, since the undisputed evidence showed that appellant was not guilty of the acts charged in the indictment. The State wholly failed to show that the literature distributed by appellant was calculated to encourage disloyalty to the Government, caused racial distrust, disorder, prejudice or hatreds, or reasonably tended to create an attitude of refusal to salute the flag.

F O U R T E E N

Appellant hereby reserves the right to amend the assignment of errors, incorporating and including additional errors reflected in the record at a time before the term begins at which this case will be argued.

G. C. CLARK

GROVER C. POWELL

HAYDEN C. COVINGTON

Attorneys for Appellant

Opinion**IN THE SUPREME COURT OF MISSISSIPPI
No. 35155
IN BANC****CLEM CUMMINGS v. THE STATE**

(Opinion rendered January 25, 1943)

ROBERDS, J.

This case is controlled by the opinion this day handed down in the case of *Taylor v. State*, No. 35143.

We desire to again emphasize, as we tried to emphasize in that case, that the Mississippi statute does not attempt to coerce, control or direct, in the slightest degree, the conscience or religious beliefs of any person. So far as that statute is concerned, one may believe in and worship a Divine Being, or any ideal or thing the worshiper may think divine, under the name of Jehovah, or any other name; or, on the other hand, he is free to worship satan, a golden calf, any animal or thing, or any image of anything, real or imaginary. What the statute does prohibit is the going about into the homes and among the people, and, by affirmative teaching and action, attempting to persuade the people, at this tragic time, to have disrespect for and disloyalty towards the flag and the state and the nation, and to evince an attitude of disobedience to the laws of the land, thereby undermining the war efforts of the state and national governments. The statute does not command any one to salute the flag or do anything else; it simply demands that people shall not engage in certain affirmative activities which the sovereign state, through its legislature, has determined are harmful to other

people and to the public welfare and to the defensive war efforts of the state and nation.

Appellant was indicted for doing the things prohibited by the statute, and the jury found on sufficient evidence that he did them.

AFFIRMED.

[SAME TITLE: separate opinion as follows:]

GRIFFITH, J., concurring.

Teaching that to salute the National flag is an act of idolatry, and that the consequences of such an act is eternal damnation, is a pointed symptom of the disease which lies at the bottom of the subversive and destructive doctrines which this appellant and his co-workers are seeking to spread in our state in this time of war, the result of which means everything to us as a state and nation. We must look behind technical obscurities and to the substance of things. If appellant may maintain the right so to teach it and urge it among the soldiers and marines wherever access may be had to them; and if our soldiers were to refuse to salute the flag wherever unfurled, and particularly when the military regulations require them to do so, then we would have an army and a navy which would be entitled to no respect at home or abroad; and whoever teaches that which, if followed, would bring our armed forces into such disrespect ought well to be in the penitentiary, as the statute appropriately declares.

[SAME TITLE: another separate opinion as follows:]

SMITH, C. J., *dissenting*.

I concur in what Judge Alexander has here said, but I am also of the opinion that it is not necessary to determine the constitutionality vel non of this statute for if it is valid its "respect for the flag" provision was not here violated. The language used, and that which the appellant here taught, must be such as "reasonably tends to create an attitude of stubborn refusal to salute, honor or respect the flag". The word "stubborn", which qualifies the word "refusal", must be given some effect. One of the definitions given by the lexicographers thereto, and which its context requires to be given here, is: "unreasonably unyielding". *State v. Butler*, 96 Ore. 219, 186 Pac. 55. The reason given by this appellant for not himself saluting the flag and teaching others that it is wrong to do so, is based on his interpretation of the Holy Scriptures, according to which such a salute is an act of obeisance to a graven image forbidden by the First and Second Commandments and his belief that these Commandments are still in force. A most "reasonable reason" for not giving the salute. We may differ with the appellant in his interpretation of these Commandments, and I personally do, nevertheless that is a matter for his own determination and not for the determination of the judges of this or any other court.

ALEXANDER and ANDERSON, JJ., concur in this opinion.

[SAME TITLE: another separate opinion as follows:]

ALEXANDER, J., *dissenting*.

Appellant was convicted under an indictment which charged him with distributing a book entitled "Children" which it was alleged "reasonably tended to create an attitude of stubborn refusal to salute, honor or respect the flag or Government of the United States or of the State of Mississippi." The statute under which it is drawn is Chapter 178, Laws of 1942, which is set forth in the controlling opinion in the companion case of Taylor v. State, decided this day. The evidence was restricted to and the conviction based upon the alleged teaching that members of the sect to which appellant belonged could not, consistently with their beliefs, perform the ceremony of a salute to the flag. To one unsympathetic with the mysticism of its creed, it can, and perhaps often is, divested of its religious aspect and thereupon attacked as mere subtle political propaganda. The record does not justify a conclusion that appellant's adherence to its teachings, whether blind or rational, was not sincere. It is clear that the advocacy of the doctrine of non-salute is allegedly based upon an interpretation of scripture. The book was written long before this Nation entered the present war. Both the book and the appellant himself, while professing allegiance to and respect for the flag, conceded the right of non-adherents to follow their own convictions. A careful reading of this book fails to impress me that it teaches dishonor to the flag but respect for a faith.

My interest in and inquiry of the matter is therefore confined to two propositions: 1) Does the literature come within the condemnation of the statute, and 2) if so, is the appellant, the sincerity of whose advocacy thereof is conceded, protected against its compulsions

by United States Constitution, Articles 1 and 14, and by Mississippi Constitution, Section 13.

The first utterance in the Federal Bill of Rights forbids the prohibiting of the free exercise of religion. Such prohibition is made effective against state action by the 14th Amendment. In the Bill of Rights of our own State Constitution, the right of freedom of speech and of the press is declared 'sacred'. Mississippi Constitution, Sections 13 and 18.

In this connection, it is sufficient that certain primal verities of personal liberty be recognized by their mere mention. Freedom of conscience and of the press, purchased in the cruel coinage of persecution survived oppression and suppression, and after breaking down the last barriers of an exercise conceded only under license, they emerged triumphant in the purpose of the founders of our republic who had sought shores where the pursuit of happiness would be unbinderd by ecclesiastical or political restraints. "Religious views are not vouchsafed by the leniency of the state but upon natural indefeasible rights of conscience." *Bloom v. Richards*, 2 Ohio St. 390; *Lovell v. Griffin*, 303 U. S. 444; *Schneider v. State*, 308 U. S. 147; *State v. Greaves*, 112 Vt. 222; *Zimmermann v. Village of London*, 38 Fed. Sup. 582. The founders thereupon made solemn declaration of such rights as being held not at the behest of the state but as endowments of their Creator and as such, unalienable because inherent. Such rights therefore antedated governments which in turn were instituted among men to secure them. *Chance v. Miss. Textbook etc. Board*, 190 Miss. 453, 200 So. 706; *Sullens v. State*, 191 Miss. 856, 4 So. 2d 356. It was made clear that the government was held to derive its just power from the consent of the governed. Whereupon, the people of the United States ordained their Constitution for the lofty purpose, among others, to insure

domestic tranquillity, and to preserve these blessings of liberty not only to themselves but to posterity, of which appellant is now a part.

Even as the several states reserved all powers not granted to the national government (U. S. Constitution, Article 10), so the citizens reserved all powers not granted to the state (Mississippi Constitution, Article 3, Secs. 5, 32) Liberty remained the sovereignty of the people. It includes all rights held to be unalienable so that in examining the issue here involved, it is as important to examine whether the state has infringed the creed of appellant as to determine whether his creed has violated the laws of the land.

A consonance between creed and conduct is one of the ends sought in the pursuit of happiness, which in the last analysis is the ultimate goal of the citizen and is a prerequisite to both individual and national tranquillity and the blessings of liberty. *Whitney v. California*, 274 U. S. 357, 375; *Cooley*, Constl. Lim. 8th Edn., p. 3. Even the safety of the republic as the supreme law must be acknowledged to rest not alone upon its power for a common defense against outside forces but upon maintaining the general welfare. In this pursuit of personal happiness, life is its condition and liberty is the avenue of its achievement. The courts must preserve it intact as a dependable causeway lest by its collapse it become a barricade. Even as liberty is guaranteed to the people, the courts must in turn guaranty life to this liberty. This happiness may not be allowed to be pursued over the crushed convictions of others whose contentment is dependent upon their right to indulge their own beliefs despite their novelty or absurdity. Happiness like disloyalty can not be judicially defined. Each must remain an abstraction subject to definition by the individual. The dilemma with which the courts are often confronted in such cases as we now

have is that they are apt to seek to define objectively things which are of necessity purely subjective. Pound, *Law and Morals*, p. 107. There is no prescription for either which the law can write. In the words of a familiar maxim, liberty is the power of doing what the law permits. Law is found to be a means to restrain or regulate liberty, and in this sense what the law does not forbid it sanctions. As hereafter discussed, the state can regulate conduct but not creed; it can fetter the hand but not the heart. Pound, *op. cit. supra.* p. 68; 4 Bl. Com. 21; *Commonwealth v. Kennedy*, 170 Mass. 18.

So that, it is not only the disability of the state to control conscience but the impropriety that it should attempt to do so which has been recognized in our laws and judicial decisions. The right in the name of conscience to 'affirm' instead of 'swear' in all oaths, to object to active combat military service, and the disqualification for jury service in capital cases are illustrations. If it be urged that these exemptions are recognized by positive statutes, it is an answer that the initial duty, performance of which is absolved, is also decreed by positive statutes. It is as egregious a political incongruity for the state to punish apostasy as that treason should seek to justify itself by conscience. Between the two extremes where on the one hand the state is bound to protect its morals and safety despite religious disapproval, and on the other, where the citizen is free to follow his conscience despite the welfare of the state, there is an area which has ever been the embattled forum both of theorists and judges. Whether the literature disseminated and the opinions expressed by appellant, considered in the light of religious teaching, falls above or below an ascertainable line of demarcation is part of our present task.

History furnishes too many instances where atheism has preached political orthodoxy and where creedal

orthodoxy has taught political heresy for us to regard the persons of men or their affiliation with a particular sect. Since the acts of appellant are not shown to have been instigated by an illegal connivance and his opinions and teachings appear solely the compulsions of his own conscience, I do not think it is relevant to discuss nor mention the sect to which he belongs. Much of the odors of prejudice which hover about appellant seem to cling to the garments of his own peculiar cult into which a dissentient populace has breathed its disapproval. Disrobed of his identifying raiment, he is revealed as a citizen of the United States and of the State of Mississippi, and it is in his status as such that he is entitled to be judged. *Meador v. Hotel Grover*, 9 So. 2d 782, 786; *De Jonge v. U. S.*, 81 L. Ed. 278. Our duty is not to approve nor condemn a ritual but to protect a freedom. We are not called upon to heed the voices of those who, smarting under what they deem a righteous resentment, would choose to display their own loyalty by casting appellant into the fiery furnace of a public's scorn. Neither should this Court extend its arm to defend zealotry against the right of prejudice to speak its frenzied piece. It must direct its solicitude toward the possibility that, in striking against hands which, however justified, are grasping the torch of liberty it may thereby quench the light itself. Of all the actors in this scene, it is the Court alone which is not free but must function in a field of constitutional limitations which are at once a confinement of liberty and a protecting barrier against its invasion. We may not indulge the popular privilege of obeying impulses whose sanction is solely in a love of country. We may inquire only whether the law compels that which this love demands. The one is as free to exhibit his derision as the other is to manifest his devotion. That personal liberty which the state concedes to one to vent his grievance in a

fervid indignation is thus made available to the other in his right to exhibit his consecration in what he deems a righteous martyrdom. The wisdom of neither is any concern of the courts. Truth and sanity must be given both the liberty and responsibility to fend for themselves. *Watson v. Jones*, 80 U. S. 728, 70 L. Ed. 666; *Sullens v. State*, *supra*. The folly of today may be tomorrow's wisdom, and charges of heresy are apt to disclose not so much the status of the condemned as the outspoken reaction of the accuser. Free speech is not a special privilege of the critic. In a companion case this day decided (*Taylor v. State*), the controlling opinion denies to the appellant the right to invest the salute with a religious aspect. By such view, the Court arrogates to itself the right to define religion for the citizen. But religion is essentially subjective. We are without right or power to say that withholding salute to the flag cannot relate to religion unless we mean our own religion. If we assume authority to say that they must be put asunder, we must at the same time concede the right of others equally privileged to join them together. The dictates of conscience are dictated by and not to the conscience. In *Barnette, et al. v. The West Virginia State Board of Education* (decided Oct. 6, 1942, by a three judge court, So. Dist. W. Va.), the court said "The salute of the flag is an expression of the homage of the soul. To force it upon one who has conscientious scruples against giving it, is petty tyranny unworthy of the spirit of this Republic and forbidden, we think, by the fundamental law." A unity of popular approval in a ceremony of salute is eminently desirable, but it is of greater importance that the unity which the Court may protect remain the only one which in a land of diverse races, creeds and philosophies can be maintained—a unity of a common possession of equal rights. The sentiment of our people's pledge to the flag

—‘One nation indivisible with equality and justice for all’—implies not a people undivided in their opinions but undivided in equality and justice. “No country or no society can be conducted by partly acknowledging the securities of liberty and partly denying them, nor by recognizing some of them and denying others. That is part democracy and part tyranny.” Hoover, *The Challenge to Liberty*, p. 198. Freedom of conscience and of religion are absolute. *Cantwell v. Connecticut*, 310 U. S. 296, 84 L. Ed. 1213.

Homage to the flag, like disloyalty, in the absence of an established legislative ritual is what the citizen thinks it is. Even as the state may not compel an affiant to swear, and yet may punish his perjury, all that it may require, in the absence of positive law, as to loyalty, is not that it manifest itself in a regimented ceremony but that it remain loyalty. The statute here seeks to punish ‘disloyalty’ and undertakes to define it in terms of an attitude of stubborn refusal to salute the flag. The controlling opinion in the Taylor case (*supra*) has defined the word ‘stubborn’. I see no reason to assume that the Legislature was unaware of its connotation nor to impute to it any purpose other than to recognize the rights of those who, not stubbornly nor arbitrarily, were ‘ready always to give . . . a reason of the hope that is in’ them. To assume that the refusal to salute is stubborn and to argue therefrom that such course is a symptom of a deep-seated disloyalty is to punish one not for the charge against him but for the evidence adduced to prove it. It is of interest to note in this connection that this ‘symptom’ was revealed by the resourcefulness of the prosecutors who at the preliminary hearing displayed in the courtroom a large American Flag and at an opportune moment requested all present to stand and salute. The convictions of appellant were thus ‘smoked out’ when he remained

seated and became at once a witness to his convictions and for the state.

I see no reason to curb the impulse to reveal a complete accord with any act or ceremony which tends to invest the symbols of our freedom with homage and respectful awe. Yet in the light of that common sense which remains the back-log of all the fires of popular enthusiasm, it can clearly be seen that if one be compelled to salute our flag under coercion it would do no good, and if he refrain under conscience it would do no harm. Thomas Jefferson wrote in 1789 "I am persuaded that the good sense of our people will always be found the best army." Hart, *Formation of the Union*, p. 140. No one who is able to recall how betrayal can be symbolized by a salute of affection may gainsay the plain truth that loyalty is a matter not of the act but of the attitude. To withhold judicial condemnation of a conscientious refusal to salute as disloyalty is to recognize not the confounding of but the fundamental separation between the homage due the 'things of God' and those 'of Caesar.' So that the issue in the present case becomes not one of salute *vel non* but loyalty *vel non*.

In this connection, it is appropriate to review the attitude of Gen. Washington expressed in a letter to General Lafayette in connection with conscientious refusal of officers of a Virginia brigade to take an oath of allegiance to the Union. "As every oath should be a free act of the mind founded on the conviction of the party of its propriety, I would not wish in any instance that there should be the least degree of compulsion exercised, or to impose my opinion in order to induce any to make it of whom it is required. The gentlemen therefore who sign the paper will use their own discretion in the matter and swear or not swear as their conscience

and feelings dictate." Sparks, *Life of Washington*, *Life of Washington*, Vol. 5, p. 366.

The literature described in the indictment should not judicially be held to create an 'attitude of stubborn refusal to salute the flag.' Its expressed purpose is to gain adherents to their sect and the import of the references to the flag must be construed in the light of the pledge of allegiance therein advocated. Any refusal is not therefore the fruit of a stubborn or arbitrary disdain but is the considered resultant of the forces of conscience. *Gilbert v. Minnesota*, 254 U. S. 325, 65 L. Ed. 287. It is true that the consciences of its converts as such are taught that the salute implies disobedience to divine command, but it concedes to all others the right to follow any regimen which a popular will sanctions as patriotic or proper. It is interesting to note that in this regard a tolerance is shown which their own detractors may concede to be a trait to which without hurt they might subscribe. Although I have adverted to the requirement of the statute that the refusal to salute must be stubborn before it can be defined as disloyalty, these views are based on the fundamental ground that even disloyalty, to be punished, must itself be defined in terms which will furnish a sufficiently ascertainable standard of guilt. *Herndon v. Lowry*, 301 U. S. 242, 81 L. Ed. 1066. Moreover, the Act of 1942 leaves disloyalty to be defined according to the wisdom or whim of the trial jurors. Chief Justice Ellsworth once charged a grand jury in regard to subversive acts that "it was not necessary that Congress should define the offense but that the rules of a known law matured by the reason of ages and which Americans have ever been tenacious of as a birthright, you will decide what acts and misdemeanors on the ground of their opposing the existence of the national government" you should prosecute. This novel view was, however, repudiated in

U. S. v. Hudson, 7 Cranch. 32, 3 L. Ed. 259, where the Court said "The legislative authority of the Union must first make an act a crime, affix a punishment to it and declare the court that shall have jurisdiction of the offense." Paterson, Free Speech and a Free Press, p. 130. We have no statute requiring a salute to the flag.

In the dissent in the Taylor case (*supra*) some elaboration is made of the further requirement that the act or conduct advocated must create a clear and present danger that by force or violence the orderly processes of the government will be subverted. There is there discussed also the effect of the war emergency as requiring a readjusted standard for defining the elements of sedition.

In the hearing of the case of Minersville School Dist. v. Gobitis on its first appeal (108 Fed. 2d 683) the Court of Appeals stated that "the salute in this case is very like that of the Hitler regime." In the light of this intimation, the verity of which we do not pause to consider, let it be supposed that under the stress of war psychology ninety per cent of our citizens should borrow from the vague philosophies of defendants' literature the fear that a compulsory salute to the flag smacks too much of a fascism in which the symbols and representatives of a people become deified, would the remaining ten percent be entitled to protection in their claim to a freedom thus to continue to show it homage? There can be but one answer. Constitutional rights are not subject to nullification by reference to a popularity poll. Men's consciences may not be held hostage by the state to compel conformity to a majority view.

The act under which appellant was convicted does not require that the flag be saluted in any prescribed manner. Some courts have held that it may not do so. *Kansas v. Smith* (Kan.), decided July 11, 1942; *Kennedy v. City of Moscow*, 39 Fed. Sup. 26; *Reid v.*

Brookville, 39 Fed. Sup. 30. The Gobitis case (310 U. S. 586) held that a public school had authority as such body by its regulations to compel pupils to salute the flag and to punish disobedience by expulsion. Putting aside the inapplicability of the decision to the present case (as to which, compare *Clark v. State*, 169 Miss. 369, 152 So. 820; 16 C. J. S. 559), it is noteworthy that one of the justices in the Gobitis case dissented and that in *Jones v. City of Opelika*, 62 Sup. Ct. 1231, 86 L. Ed. 1174, three of those who joined in the majority opinion in the former case stated that "We think this is an appropriate occasion to state that we now believe it was wrongly decided." Our attention has been called to a recent case *Barnette v. The W. Va. State Bd. of Edu.*, decided Oct. 6, 1942, by a three judge court for the Southern District of West Virginia. This tribunal in recognition of the present attitude of the Gobitis case as a precedent refused to follow its holding.

The statute under consideration undertakes to punish those who "either by word or deed weaken the morale or unity of our people or adversely affect their honor and respect for the flag or government of the United States or of the State of Mississippi." It declares that such persons "are a menace to the safety of this state." The specification as to a refusal to salute the flag is thereby made a conclusive presumption of both menace and disloyalty. Whether the legislature may constitutionally go this far need not be decided since we are considering only the implied exemption in favor of religious freedom. Nor need we discuss the contention that the form of and occasion for the salute is not prescribed; nor that there is lacking even a general understanding of a public sanction thereof as a dictum of civilian etiquette. We withhold comment also upon the recent Act of Congress (Sec. 7, Act, Cong.

June 22, 1942, Public No. 623) which although requiring the salute for those in military service, adds: "However, civilians will always show full respect to the flag when the pledge is given by merely standing at attention, men removing the headdress." As heretofore stated, our citizens as such are as free to construe a failure to salute as disloyalty, as are appellants to construe it as idolatry.

This Court need not restrain its expression of reverence for our Nation's flag. It need not enlarge its ready witness thereto by eulogy or apostrophe, although materials for an ample encomium are not wanting and lend themselves to fluency. Nor may the concept be denied expression that the flag is paid its sincerest homage when it is confidently left free to inspire the spontaneous respect of minds which themselves are free. The courts may control what its citizens do to our flag but not what the flag does to them.

Anderson, J., and Smith, C. J., concur in this opinion.

Judgment

IN THE SUPREME COURT OF MISSISSIPPI
MONDAY MORNING, JANUARY 25, 1943
MINUTE BOOK BH — PAGE 89

No. 35155

Clem Cummings vs. State

This cause having been submitted at a former day of this term on the record herein from the Circuit Court of Warren County and this court having sufficiently examined and considered the same and being of the opinion that there is no error therein doth order and adjudge that the judgment of said Circuit Court rendered in this cause at the July 1942 Term—a conviction under Chapter 178, General Laws of Mississippi 1942 and a sentence to the State Penitentiary for the duration of the war or not to exceed 10 years—be and the same is hereby affirmed. It is further ordered and adjudged that the County of Warren do pay the costs of this appeal to be taxed, etc.

[Same Caption Omitted in Printing]

**Petition for Appeal, Statement,
Assignments of Error and
Prayer for Reversal**

Petition for Appeal

Being aggrieved by the final decision of the Supreme Court of the State of Mississippi, and the judgments of the courts below, in the above entitled cause, the appellant herein hereby prays that an appeal be allowed to the Supreme Court of the United States herein, and for an order fixing the amount of the bond thereon.

Statement

This case is one in which is challenged the validity of a statute of the State of Mississippi, known as Chapter 178, General Laws of Mississippi, which, when stripped of its preamble and sections 2, 3, 4, 5, 6 and 7, which are not involved, reads:

SECTION 1. *Be it enacted by the Legislature of the State of Mississippi,* That any person who individually, or as a member of any organization, association, or otherwise, shall intentionally preach, teach, or disseminate any teachings, creed, theory, or set of alleged principles, orally, or by means of a phonograph or other contrivance of any kind or nature, or by any other means or method, or by the distribution of any sort of literature, or written or printed matter, designed and calculated to encourage violence, sabotage, or disloyalty to the government of the United States, or the State of Mississippi, or who by action or speech, advocates the cause of the enemies of the United States

or who gives information as to the military operations, or plants of defense or military secrets of the nation or this State, by speech, letter, map or picture which would incite any sort of racial distrust, disorder, prejudices or hatreds, or which reasonably tends to create an attitude of stubborn refusal to salute, honor or respect the flag or government of the United States, or of the state of Mississippi, shall be guilty of a felony and punished by imprisonment in the state penitentiary until treaty of peace be declared by the United States but such imprisonment shall not exceed ten years."

This statute was duly passed and approved by the Legislature of the State of Mississippi and is here drawn in question upon the ground that said statute is repugnant to the First and Fourteenth Amendments to the United States Constitution. The Supreme Court of the State of Mississippi is the court of last resort in this cause in the State of Mississippi in which a decision could be had and the decision of that court is in favor of the validity of said statute.

Therefore, in accordance with the rules of the Supreme Court of the United States (Rule 46, paragraph 2 [28 U.S.C. sec. 354]), appellant respectfully shows this Court that the case is one in which under the legislation in force when the Act of January 31, 1928 (45 Stat. L. 54) was passed, to wit, under Section 237 (a) of the Judicial Code (28 U.S.C., sec. 344), a review could be had in the Supreme Court of the United States on a writ of error as a matter of right.

The Supreme Court of the State of Mississippi, court of last resort in this cause in the State of Mississippi, rendered its decision herein on the 25th day of January, 1943, which became final on January 25, 1943, and by its said decision affirmed the judgment of the Circuit Court in said cause. The opinion of said Supreme Court of the State of Mississippi has not yet been officially reported but

is of record unofficially: *Cummings v. State of Mississippi*, 11 So. 2d 683. That opinion appears in the record at page 130, and will appear at 194 Miss.

The order and judgment of affirmance by said Supreme Court of the State of Mississippi entered in the office of the Clerk of the said Court on January 25, 1943, became a final judgment on the same day, the date when the opinions were filed in said cause.

Assignments of Error

Now comes appellant in the above cause and files herewith, together with said petition for appeal, these assignments of error, and says that there are errors committed by the courts below in the record and proceedings of the above entitled cause, and for the purpose of having the same reviewed in the United States Supreme Court, makes the following assignments:

FIRST: The Supreme Court of Mississippi erred in failing to reverse the judgment of the trial court because the court should have sustained appellant's motion to quash the indictment.

SECOND: The Supreme Court of Mississippi erred in failing to reverse the judgment of the trial court because the court should have sustained appellant's demurrer to the indictment.

THIRD: The Supreme Court of Mississippi erred in failing to reverse the judgment of the trial court because the court should have sustained appellant's motion for a directed verdict filed at the close of the State's evidence.

FOURTH: The Supreme Court of Mississippi erred in failing to reverse the judgment of the trial court because the court should have sustained appellant's motion for an instructed verdict filed at the close of all the evidence.

FIFTH: The Supreme Court of Mississippi erred in failing to reverse the judgment of the trial court because the court should have sustained appellant's motion for a new trial duly and timely filed.

SIXTH: The Supreme Court of Mississippi erred in failing to hold that the statute in question is unconstitutional on its face because, by its terms, it abridges appellant's rights of freedom of press and of speech contrary to the First and Fourteenth Amendments to the United States Constitution.

SEVENTH: The Supreme Court of Mississippi erred in failing to hold that as construed and applied to the particular facts and circumstances of the case the statute in question is unconstitutional because as so construed and applied it abridges appellant's rights of freedom to worship ALMIGHTY GOD JEHOVAH, freedom of press and of speech contrary to the First and Fourteenth Amendments to the United States Constitution.

EIGHTH: The Supreme Court of Mississippi erred in failing to hold that on its face and as construed and applied the statute violates the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution because it is vague, indefinite, uncertain, too general, fails to furnish a sufficiently ascertainable standard of guilt, and enables the court and jury to speculate, and amounts to a dragnet so as to deprive appellants of liberty without equal protection and due process of law.

NINTH: The Supreme Court of Mississippi erred in failing to hold that there was no evidence that there existed a clear and present danger that the evils prohibited by the statute would result from the literature distributed by appellant or the words and conduct of appellant.

TENTH: The Supreme Court of Mississippi erred in failing to hold that the trial court committed error in refusing to give appellant's special requested instruction number 4.

ELEVENTH: The Supreme Court of Mississippi erred in failing to hold that the trial court committed error in refusing to give appellant's special requested instruction number 9.

Prayer for Reversal

For and on account of the above errors appellant prays that the said judgment of the Supreme Court of the State of Mississippi hereinabove described in the above entitled cause be reviewed by the Supreme Court of the United States and reversed, and a judgment rendered in favor of the appellant and for costs.

G. C. CLARK
HAYDEN C. COVINGTON
Attorneys for Appellant

[Same Caption Omitted in Printing]

Order Allowing Appeal

Appellant in the above entitled suit and cause has prayed for allowance of an appeal in this cause to the Supreme Court of the United States from the judgment made and entered by the Supreme Court of the State of Mississippi on the 25th day of January, 1943, affirming the judgment of the Circuit Court in said cause there titled. to wit, Clem Cummings, appellant v. State of Mississippi, appellee.

It appearing that the appellant in the assignments of error and in said cause before argument attacked the

statute in question on the grounds, as contended by appellant, that it unreasonably abridges freedom to worship ALMIGHTY GOD, freedom of conscience, of speech, of press, and that it is void because of vagueness, and in conflict with federal legislation on the same subject, and because there was not evidence to sustain the conviction, all of which contentions were overruled by decision and judgment of the said Supreme Court of the State of Mississippi previously rendered herein.

It appearing that appellant has presented and filed a petition for appeal to the Supreme Court of the United States, a statement, assignments of error and prayer for reversal and jurisdictional statement, all within three (3) months from date that said judgment of the Supreme Court of the State of Mississippi became final on January 25, 1943, pursuant to the statutes and the rules of the Supreme Court of the United States in such case made and provided,

IT IS NOW HERE ORDERED that an appeal be and the same is hereby allowed to the Supreme Court of the United States from the judgment of the Supreme Court of the State of Mississippi, and the said judgment of the Circuit Court, in aforesaid cause as provided by law, and,

IT IS FURTHER ORDERED that the Clerk of the Supreme Court of the State of Mississippi shall prepare and certify to the printed transcript of the record, proceedings and judgment in the said cause and transmit the same to the Supreme Court of the United States together with all exhibits in the original form, so that he shall have the same in said Court within twenty (20) days from date.

AND IT IS FURTHER ORDERED that security for costs on appeal be fixed in the sum of Two Hundred and Fifty (\$250.00) Dollars and appellant having heretofore presented and filed an undertaking in the sum of One Thousand (\$1000.00) Dollars executed by the National Surety Corporation, which provides for the appearance of the appellant to abide by the judgment of this court and

also to cover the costs of appeal to the United States Supreme Court which has been approved by the court, it is ordered that no additional bond to cover costs be required.

Dated, March , 1943.

SIDNEY SMITH

Chief Justice of the
Supreme Court of the
State of Mississippi

[Same Caption Omitted in Printing]

Citation

To THE STATE OF MISSISSIPPI and

Its Counsel of Record in the above-entitled cause,
and

To The Attorney General of the State of Mississippi
Greeting

You are hereby cited and admonished to appear at a Supreme Court of the United States, at Washington, in the District of Columbia, within twenty (20) days from the date hereof, pursuant to an appeal, filed in the Clerk's office of the Supreme Court of the State of Mississippi, where Clem Cummings is appellant and you are appellee, to show cause, ~~if~~ any there be, why the judgment rendered against said appellant as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable Sidney Smith, Chief Justice of the Supreme Court of the State of Mississippi, this .. day of March, in the year of our Lord one thousand nine hundred and forty-three.

SIDNEY SMITH

Chief Justice of the
Supreme Court of the
State of Mississippi

Bond

[Filed 2/2/43, Tom O. Ellis, Clerk]

IN THE SUPREME COURT OF MISSISSIPPI

No. 35, 155

Clem Cummings, Appellant, v. State of Mississippi

**APPEARANCE and COST BOND ON APPEAL
to UNITED STATES SUPREME COURT**

WHEREAS, on the 25th day of January, 1943, an Opinion was filed by this Court in the above captioned and numbered case, affirming the judgment and sentence of the Circuit Court of Warren County of July 22, 1942, which judgment was adverse to the Appellant;

WHEREAS, appellant, Clem Cummings, being dissatisfied with said judgment, desires and intends to file an appeal in said matter to the Supreme Court of the United States;

WHEREAS, it is estimated that the costs of Circuit Court, Supreme Court of Mississippi and Supreme Court of the United States will not exceed the sum of \$250.00;

WHEREAS, by Order of Court a bond in the amount of (\$1000.00) Dollars was fixed by the Court to act as an appearance appeal bond and cost bond on appeal to the United States Supreme Court, to be executed and filed by the appellant;

NOW, therefore, Know All Men by These Presents, That we, Clem Cummings, as principal, and the undersigned as sureties, do hereby acknowledge ourselves, our heirs, our executors and successors firmly bound unto the State of Mississippi in the sum of One Thousand (\$1000.00) Dollars. The condition of the bond is such that if the appellant, Clem Cummings, shall prosecute his appeal with effect to the United States Supreme Court and appear before this Court upon the return of the mandate from the United States Supreme Court and abide by the judgment to be entered and pay all costs incurred in the United States Supreme Court by reason of said appeal that such bond and obligation here incurred shall become null and void; however, if the said Clem Cummings shall not prosecute his appeal with effect and if he fails to appear before this Court and abide by the judgment entered against him, the said bond and obligation shall remain in full force and effect.

WITNESS our hands and the seal of the surety corporation on this the 2nd day of Feb. 1943.

(Sgd) G. C. Clark, *Witness*

(Sgd) J. O. Barnes, *Witness*

(Sgd) Clem Cummings

Clem Cummings, *Principal*

NATIONAL SURETY CORPORATION

By (Sgd) F. Wallace

Its Attorney in Fact *as Surety* (SEAL)

Approved and ordered filed on this the 2nd day of February 1943:

(Sgd) Sydney Smith

Chief Justice of the Supreme
Court of Mississippi.

[Same Caption Omitted in Printing]

Statement of Points to Be Relied Upon

Comes now appellant in the above-entitled cause and states that the points upon which he intends to rely in this Court in this cause as follows:

Point 1. The Supreme Court of the United States should hold that the statute in question is unconstitutional on its face because, by its terms, it abridges appellant's rights of freedom of press and of speech contrary to the First and Fourteenth Amendments to the United States Constitution.

Point 2. The Supreme Court of the United States should hold that as construed and applied to the particular facts and circumstances of the case the statute in question is unconstitutional because as so construed and applied it abridges appellant's rights of freedom to worship ALMIGHTY GOD JEHOVAH, freedom of press and of speech contrary to the First and Fourteenth Amendments to the United States Constitution.

Point 3. The Supreme Court of the United States should hold that on its face and as construed and applied, the statute violates the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution because it is vague, indefinite, uncertain, too general, fails to furnish a sufficiently ascertainable standard of guilt, and enables the court and jury to speculate, and amounts to a dragnet so as to deprive appellants of liberty without equal protection and due process of law.

Point 4. The Supreme Court of the United States should hold that there was no evidence that there existed a clear and present danger that the evils prohibited by the statute would result from the literature distributed by appellant or the words and conduct of appellant.

Point 5. The Supreme Court of the United States should hold that a general verdict will not support a conviction where the undisputed evidence shows that either ground of

conviction violates the constitutional rights of appellant or where one of the provisions of the statute sustaining the conviction is unconstitutional.

G. C. CLARK
HAYDEN C. COVINGTON
Attorneys for Appellant

[Same Caption Omitted in Printing]

Praecipe for Transcript of the Record

TO HONORABLE TOM Q. ELLIS, Clerk of the Supreme Court of Mississippi:

You will please prepare a printed copy of the entire record filed in the above entitled and numbered cause in the Circuit Court and the Supreme Court of Mississippi, for the purpose of filing an appeal with the Clerk of the United States Supreme Court. The record should contain the following documents:

(1) All proceedings had in the Circuit Court and Supreme Court of Mississippi, including all opinions filed herein.

(2) Petition for allowance of appeal to the Supreme Court of the United States, Statement, Assignments of Error and Prayer for Reversal.

(3) Jurisdictional statement.

(4) Order allowing appeal to the Supreme Court of the United States.

(5) Statement of points to be relied upon in the Supreme Court of the United States.

(6) Citation, signed by the Chief Justice of the Supreme Court of Mississippi.

(7) Bond for costs on appeal to the Supreme Court of the United States.

(8) Notice calling Appellee's attention to paragraph 3 of Rule 12 of Rules of the Supreme Court of the United States.

(9) Copy of stipulation waiving right to file papers in opposition to jurisdiction of court.

(10) This Praeceptum for transcript of the record.
Dated, March . ., 1943.

G. C. CLARK
HAYDEN C. COVINGTON
Attorneys for Appellant

[Same Caption Omitted in Printing]

**Notice Calling Appellee's Attention to
Paragraph 3 of Rule 12 of Rules of the
Supreme Court of the United States**

Sirs:

You will take notice that paragraph 3 of Rule 12 of the Revised Rules of the Supreme Court of the United States provides that "the appellee may file with the clerk of the court possessed of the record" within 15 days after service of the jurisdictional statement and other papers on appeal, a typewritten statement disclosing any matter or ground making against the jurisdiction of the Supreme Court of the United States asserted by the appellant, which rule is hereby called to your attention as is required by the Rules of the Supreme Court of the United States.

Dated, March . ., 1943.

G. C. CLARK
HAYDEN C. COVINGTON
Attorneys for Appellant

To: Greek L. Rice

Attorney General and
George H. Ethridge
Ass't Attorney General
Jackson, Mississippi

[Same Caption Omitted in Printing]

Acknowledgment of Service

On behalf of the Appellee in the above entitled cause, service is hereby acknowledged of a printed copy of the record containing copies of the following documents, to-wit:

1. All proceedings had in the Circuit Court and Supreme Court of Mississippi, including all opinions filed herein.

2. Petition for allowance of appeal to the Supreme Court of the United States, Statement, Assignments of Error and Prayer for Reversal.

3. Jurisdictional statement.

4. Order allowing appeal to the Supreme Court of the United States.

5. Statement of points to be relied upon in the Supreme Court of the United States.

6. Praecipe for transcript of the record.

7. Citation, signed by the Chief Justice of the Supreme Court of Mississippi.

8. Bond for costs on appeal to the Supreme Court of the United States.

9. Notice calling Appellee's attention to paragraph 3 of Rule 12 of Rules of the Supreme Court of the United States.

10. Copy of stipulation waiving right to file papers in opposition to jurisdiction of court.

Dated, March , 1943.

GEORGE H. ETHRIDGE

*Assistant Attorney General
Counsel for Appellee*

Stipulation

It is hereby stipulated that the papers hereinbefore printed comprise true and correct copies of the record from the Circuit Court and Supreme Court of the State of Mississippi and that printing of all exhibits is omitted and said exhibits shall be submitted in original form to the Supreme Court of the United States.


Dated, March , 1943.

GEORGE H. ETHRIDGE
Assistant Attorney General
Counsel for Appellee

HAYDEN C. COVINGTON
117 Adams St.
Brooklyn, New York
Counsel for Appellant

Clerk's Certificate

STATE OF MISSISSIPPI, COUNTY OF HINDS, ss:

I, Tom Q. Ellis, Clerk of the Supreme Court of Mississippi, do hereby certify that the next foregoing pages contain a full, true and complete printed copy of all the papers, pleadings, proceedings proceedings requested in appellant's praecipe for the record on appeal to the United States Supreme Court in the case entitled Clem Cummings v. State of Mississippi, and Numbered 35155 on the docket of the Supreme Court of Mississippi as the same appears  on file in and of record in my office and in our said court.

Given under my hand and seal of office this the 13th day of March, 1943.

TOM Q. ELLIS, Clerk
Supreme Court of Mississippi
[SEAL]